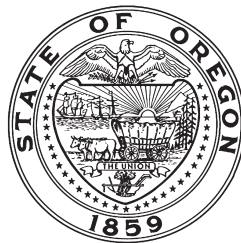


OREGON BULLETIN

Supplements the 2008 *Oregon Administrative Rules Compilation*

Volume 47, No. 5
May 1, 2008

For March 17, 2008–April 15, 2008



Published by
BILL BRADBURY
Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

ORS 183.310(9) defines “rule” as “any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency.” Agencies may adopt, amend, repeal or renumber rules, permanently or temporarily (up to 180 days), using the procedures outlined in the *Oregon Attorney General’s Administrative Law Manual*. The Administrative Rules Unit, Archives Division, Secretary of State assists agencies with the notification, filing and publication requirements of the administrative rules 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 the changes to individual rules, and organize the rule filing forms for permanent retention, the Administrative Rules Unit has developed a “history” for each rule which is located at the end of 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 the agency, filing number, year, filing date and effective date in an abbreviated format. 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 that 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 annual, bound *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 Website 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, Oregon State Archives, 800 Summer Street NE, Salem, OR 97310, (503) 373-0701, Julie.A.Yamaka@state.or.us

2007–2008 Oregon Bulletin Publication Schedule

The Administrative Rule 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 97301. 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 ARC 910-2003 and ARC 915-2005 are available from the Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97301, or are downloadable from the Oregon State Archives Website.

Publication Authority

The *Oregon Bulletin* is published pursuant to ORS 183.360(3). Copies of the original Administrative Orders may be obtained from the Secretary of State, Archives Division, 800 Summer Street, Salem, Oregon, 97301; (503) 373-0701. The Archives Division charges for such copies.

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EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 08-07

DIRECTING STATE AGENCIES TO PROTECT COASTAL COMMUNITIES IN SITING MARINE RESERVES AND WAVE ENERGY PROJECTS

Marine reserve designations and wave energy siting in Oregon's Territorial Sea have the potential to significantly impact coastal communities and ocean users. The State must adopt a comprehensive, thoughtful approach to planning marine reserve designations and wave energy siting that balances the needs of Oregon's coastal communities and ocean users with opportunities for continued economic development.

Oregon's coastal communities are comprised of distinct local economies that share a common connection to the ocean and its resources. Coastal communities and ocean users have a wealth of knowledge about maintaining nearshore marine resources and their input is essential to developing informed recommendations for marine reserves, wave energy development and other new uses of the ocean. Oregon can stimulate and strengthen the coastal region's economic vitality by encouraging development of new sustainable industries while preserving existing livelihoods in commercial and sport fishing, ocean recreation, tourism, forest products and agriculture.

Oregon is distinguished among sister states for its collaborative and innovative approach to ocean resource management. Oregon's Ocean Policy Advisory Council (OPAC), a marine policy advisory body, was created by the legislature to ensure the conservation and responsible development of Oregon's ocean resources. OPAC is comprised of representatives from coastal communities and state agencies, including but not limited to Oregon Department of Fish and Wildlife (ODFW), Department of Land Conservation and Development (DLCD) and Oregon Parks and Recreation Department (OPRD).

At my request, OPAC has begun the process of recommending marine reserve designations. OPAC will also be involved in advising the State about other proposed uses of Oregon's Territorial Sea. ODFW, as the state agency with principal responsibility to manage marine fisheries and other marine wildlife, is uniquely poised to lead OPAC in developing marine reserve designations. ODFW has adopted a nearshore marine resource conservation strategy and a statewide conservation strategy to preserve and protect Oregon's ecosystems and the species that depend on them.

To further protect coastal communities, Oregon must closely collaborate with the Federal Energy Regulatory Commission (FERC), the federal agency responsible for reviewing applications for licenses to site and operate wave energy facilities. A Memorandum of Understanding (MOU) between FERC and Oregon outlines the steps for this collaboration. The MOU provides that Oregon will develop a comprehensive plan, which FERC will consider in its wave energy license review process for hydrokinetic projects within Oregon's Territorial Sea. The comprehensive plan will seek to identify appropriate locations for future wave energy projects that minimize adverse impacts to existing ocean resources and resource users. In addition, the MOU provides that FERC and Oregon will include terms and conditions in wave energy licenses and permits to optimally site wave energy facilities to mitigate the impacts of projects on coastal communities.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The director of ODFW, or the director's designee, shall serve as my representative to OPAC. ODFW shall serve as the lead agency in the OPAC marine reserve recommendation process.

2. DLCD, together with ODFW, shall continue to provide OPAC with administrative staff and technical support. OPRD shall continue to provide staff assistance to OPAC. All OPAC member agencies shall continue to support the Marine Reserves Working Group and the Scientific and Technical Advisory Committee (STAC) through the marine reserves recommendation process.

3. The director of ODFW, or the director's designee, shall work with OPAC and its member agencies to:

a. Prioritize OPAC activities directly related to implementing an effective public nomination and recommendation process for marine reserves until January 1, 2009, when the process is complete.

b. Recommend not more than nine sites for consideration as marine reserves that, individually or collectively, are large enough to allow scientific evaluation of ecological benefits, but small enough to avoid significant economic or social impacts, on or before January 1, 2009.

c. Give priority consideration to marine reserve designation nominations developed by coastal community nominating teams (e.g., nearshore action teams) comprised of coastal community members, ocean users and other interested parties.

d. On or before July 1, 2008, publish a marine reserve nomination form. The nomination form shall utilize STAC expertise. The form shall address site location characteristics, potential biological, social and economic impacts, potential economic development opportunities, and any research opportunities.

e. On or before November 1, 2008, submit a proposal to my office for financing, budgeting and implementing OPAC's marine reserve recommendation process in the 2009-11 biennium.

f. On or before December 1, 2008, use nomination criteria as a coarse filter to review marine reserve nominations for more thorough evaluation by state agencies.

g. On or before January 1, 2009, OPAC member agencies, utilizing STAC and other scientific and technical expertise, shall engage in a secondary review process to develop additional criteria that assess social, economic and biological impacts of marine reserve nominations.

h. Continue to collaborate with Oregon Sea Grant, a program organized under the National Oceanic and Atmospheric Administration in collaboration with Oregon State University, in its outreach and public education efforts to facilitate community-driven site nominations. The Department of Economic and Community Development (OECD) shall provide supplemental funding for travel, public outreach facilitation and publication costs to support Oregon Sea Grant's efforts.

4. Following evaluation of marine reserve sites nominated by OPAC and legislative funding approval, State Land Board, Land Conservation and Development Commission (LCDC), Oregon Fish and Wildlife Commission and other appropriate agencies shall consider OPAC's recommendations and agency evaluations for potential adoption of a limited system of marine reserves consistent with ORS 196.443 and in coordination with OPAC and any amendments to Oregon's Territorial Sea Plan.

5. DLCD shall seek recommendations from OPAC concerning appropriate amendments to Oregon's Territorial Sea Plan, reflecting comprehensive plan provisions on wave energy siting projects. On or before July 31, 2009, DLCD shall begin the process to develop proposed amendments to Oregon's Territorial Sea Plan for consideration by LCDC for such amendments. DLCD shall provide final

EXECUTIVE ORDERS

amendment recommendations to LCDC on or before December 1, 2009.

6. DLCD shall submit any comprehensive plan provisions incorporated into Oregon's Territorial Sea Plan to the National Oceanic and Atmospheric Administration for approval as enforceable policies of Oregon's Coastal Management Program under the federal Coastal Zone Management Act.

7. OPAC shall work with Oregon Sea Grant and the Oregon Coastal Zone Management Association to provide outreach and public education to coastal communities concerning the potential positive and adverse impacts of wave energy.

Done at Salem, Oregon, this 26th day of March, 2008.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDER NO. 08-08

GOVERNOR'S TASK FORCE ON VETERANS SERVICES

The unanticipated consequences of the Afghanistan and Iraq Wars on Oregon families and the Oregon military have sparked immense interest in veterans issues among Oregonians. In Oregon alone, over 7,000 National Guard mobilizations for active duty service have occurred since September 11, 2001. Nationwide, more than 1.2 million men and women have already served in Afghanistan and Iraq. Many more servicemen and women are expected to deploy to Afghanistan and Iraq one or more times before the war is over.

Since 2001, Congress has authorized funds for major combat operations abroad while failing to keep pace with the needs of our veterans. For example, in Fiscal Year 2008, over \$625 billion will be spent by the Department of Defense on military programs and the Afghanistan and Iraq wars. Yet in FY 2008, the Department of Defense and the Veterans Administration combined will spend less than 10% of that amount, \$61 billion, on healthcare for veterans and dependents.

In all, more than 361,000 living Oregonians have served in uniform. While the veterans issues associated with the present Afghanistan and Iraq Wars are significant, those issues exist within the wider context of how we address veterans care. The impending retirement of Vietnam-era veterans, and the complexities associated with end-of-life care for World War II and Korean War veterans, present important policy questions and budgetary consequences for Oregon.

Uncoordinated attempts to provide care to World War II, Korean and Vietnam-era war veterans has created confusion among veterans advocates, agencies and families. At times, natural allies have worked at cross-purposes due to the constraints of existing policies, procedures, and programs. The lack of a comprehensive approach to veterans care limits the impact of scarce available resources and restrains our capacity to help veterans who deserve and need care.

All Oregon veterans would benefit from a collaborative and comprehensive examination and inventory of existing state and federal policies, programs and services, with a focus on three specific areas: (1) reintegration services; (2) post-separation access to services; and (3) retirement/senior care.

A programmatic evaluation is necessary to assess the wide scale and scope of services and activities associated with veterans care. The purpose of this evaluation will be to facilitate dialogue between veterans advocates, agencies, families, policy staff and the public about priorities for future action, as well as to promote the efficient use of limited resources.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The Governor's Task Force on Veterans Services (Task Force) is established.
2. The Task Force shall consist of twenty-seven (27) members appointed by the Governor including:
 - a. One or more representatives from local, state and federal government;
 - b. Veterans from at least two distinct military conflicts;
 - c. Representatives from veterans support organizations;
 - d. Representatives from the Oregon Reintegration Team;
 - e. One member of the Oregon Senate designated by the Senate President;
 - f. One member of the Oregon House of Representatives, designated by the Speaker of the House; and
 - g. Representatives of the public at large.
3. The Governor shall appoint the chair of the Task Force, who shall establish an agenda and provide leadership and direction for the Task Force. The chair may appoint and approve the creation of subcommittees of the Task Force. The chair may, on behalf of the Governor, request participation of representatives of other federal, state, county and non-profit associations for the purposes of this effort.
4. The Task Force shall compile, review and evaluate research on existing veterans policies, procedures and programs. This review shall be organized to reflect three major policy areas: (1) reintegration services; (2) post-separation access to services; and (3) retirement/senior care.
5. The Task Force shall develop an inventory of existing programs, perform a programmatic evaluation of identified programs and make recommendations for action. In fulfilling its charge, the Task Force shall:
 - a. Compile a program inventory;
 - b. Prepare a baseline evaluation for programs identified;
 - c. Hold public hearings on existing programs associated with the three major policy areas of reintegration services, post-separation access to services, and retirement/senior care;
 - d. Develop a comprehensive list of recommendations;
 - e. Prioritize the list of proposals into tiers for legislative and executive consideration; and
 - f. Report written findings and recommendations to the Governor on or before December 31, 2008.
6. A quorum for Task Force meetings shall consist of a majority of the appointed members. The Task Force shall strive to operate by consensus; however, the Task Force may approve measures and make recommendations based on an affirmative vote of the majority of the quorum present.

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7. The Oregon Department of Veterans Affairs, the Oregon Department of Human Services, the Department of Administrative Services and the Governor's Legal Counsel shall provide staff support to the Task Force. All other state agencies shall provide assistance to the Task Force upon request.

8. Task Force members are not entitled to reimbursement of expenses or per diem provided in ORS 292.495.

9. This Order shall remain in effect until December 31, 2008.

Done at Salem, Oregon this 27th day of March, 2008.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDER NO. 08-09

GOVERNOR'S HEALTH INFORMATION INFRASTRUCTURE ADVISORY COMMITTEE

Health care providers need full access to an individual's health information to make the best health care decisions possible. The fragmentation of Oregon's health information system, however, prevents health care providers from quickly and efficiently accessing health information when it is most needed. Currently, health information is stored across a wide array of disconnected paper and computerized systems. Without a standardized system for exchanging health information, health care providers are forced to practice based on incomplete information or to order duplicative and costly medical tests and procedures.

Creating a secure, computerized health information system that streamlines access to each individual's medical history will enable health care providers to quickly and efficiently access health information. Such a system will improve the delivery of care in the doctor's office, reduce medical errors and save patients money by decreasing the number of inappropriate and duplicative treatments. A health information system would also enable consumers to be more proactive in managing their own health care and wellness. Finally, health information technology offers great promise as a means of providing rural and underserved areas with additional health care access through technologies such as telemedicine.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The Governor's Health Information Infrastructure Advisory Committee (the "HIIAC") is established. The HIIAC shall replace the Oregon Health Information Security and Privacy Collaborative within the Office for Oregon Health Policy and Research.

2. The HIIAC shall be comprised of no more than 23 members, appointed by the Governor. Membership shall include representatives from the public, the health care provider community, health care insurance plans, public health organizations, safety-net health care providers, the information technology field, the research community and academia.

3. To develop a strategy for the implementation of an Oregon health information system, the HIIAC shall:

a. Review and identify obstacles to the implementation of an effective health information exchange infrastructure in Oregon and provide policy recommendations to remove or minimize those obstacles;

b. Outline the role of the State in developing, financing, promoting and implementing a health information infrastructure;

c. Recommend how to facilitate the statewide adoption of health information system standards and interoperability requirements to enable secure exchange of health information exchange;

d. Monitor the development of federal and applicable international standards, coordinate input to the Nationwide Health Information Network, and ensure that Oregon's recommendations are consistent with emerging federal and applicable international standards;

e. Identify partnership models and collaboration potential for implementing electronic health records and exchange systems, including review of current efforts in the state and opportunities to build upon those efforts;

f. Recommend a plan for the creation of a health information infrastructure that preserves the privacy and security of Oregonian's health information, as required by state and federal law; and

g. Develop evaluation metrics to measure the implementation of health information technology and the efficacy of health information exchange in Oregon.

4. The Governor will appoint a chair of the HIIAC. The chair shall establish an agenda for the HIIAC and provide leadership and direction.

5. A quorum for HIIAC meetings shall consist of a majority of the appointed members. The HIIAC shall strive to operate by consensus; however, the HIIAC may approve measures and make recommendations based on an affirmative vote of a majority of members.

6. No member may grant a proxy for his or her vote to any other member or member designee. The Governor will fill any vacancy on the HIIAC by appointment.

7. The HIIAC shall provide an initial written report of findings and recommendations to the Oregon Health Fund Board on or before July 31, 2008. The HIIAC shall provide an initial written report of findings and recommendations to Governor on or before December 31, 2008, and annually thereafter.

8. The Governor's Office and the Office of Health Policy and Research shall provide staff support to the HIIAC. All other state agencies shall provide necessary assistance to the HIIAC upon request.

9. The members of the HIIAC shall receive no compensation for their activities as members of the HIIAC, but may be reimbursed for travel expenses incurred in attending HIIAC business pursuant to ORS 292.495(2) and subject to availability of funds.

10. This Order expires on December 31, 2014.

Done at Salem, Oregon, this 27th day of March, 2008.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 08-10

DETERMINATION OF A STATE OF EMERGENCY IN TILLAMOOK, LINCOLN, COOS, CLATSOP AND CURRY COUNTIES AND COASTAL PORTIONS OF LANE AND DOUGLAS COUNTIES DUE TO LIMITATIONS ON OCEAN COMMERCIAL AND SPORT SALMON FISHING

Pursuant to ORS 401.055, I find that the dramatic decline in Sacramento River fall Chinook salmon and lower Columbia River natural populations of Chinook and coho available for harvest by the ocean fishing industry will result in the elimination of a viable commercial and sport salmon fishing season along the Oregon coast. These conditions have created an imminent emergency.

The affected areas are Tillamook, Lincoln, Coos, Clatsop and Curry Counties and the coastal portions of Douglas and Lane Counties that are west of Range 8 West, Willamette Meridian. I therefore declare a State of Emergency in the abovementioned counties and portions of counties.

NOW THEREFORE, IT IS HEREBY ORDERED AND DIRECTED:

1. All state agencies shall work in a cooperative and coordinated manner in order to mitigate the impacts of this emergency, provide expedited service and resources to persons and businesses adversely affected by the emergency, and focus state efforts in a manner most likely to relieve the unemployment, human suffering, financial loss and other economic impacts of this emergency. In addition to the specific measures discussed in this Executive Order, all state agencies are encouraged to think broadly and creatively about actions that agencies can take to address this emergency and shall communicate such ideas to the Office of the Governor. Response to the emergency shall be directed and coordinated by the Office of the Governor, in coordination with the Office of Emergency Management (OEM).
2. OEM shall coordinate with affected counties to provide any and all assistance to prevent reasonable threats to life or property, including the pursuit of any all available federal funding or resources to assist in mitigating the effects of this emergency. OEM shall also facilitate a partnership with federal agencies to help relieve the current salmon emergency and assist affected counties' with their ongoing emergency preparedness efforts.
3. The Oregon Department of Fish and Wildlife, which operates under the direction of the State Fish and Wildlife Commission, is strongly encouraged to develop recreational and commercial fishing seasons, consistent with state conservation plans and the federal framework in order to help mitigate the effects of this emergency on coastal economies.
4. The Oregon Department of Agriculture (ODA) will continue to liaison with the seafood commodity commissions, particularly the Salmon Commission, to provide a communication link between state government and the commercial fishing fleet. The ODA will explore opportunities to maintain a Salmon Commission structure during the salmon fishing shutdown.
5. An interagency group led by the Governor's policy advisor on workforce development shall investigate retraining opportunities for ocean fishing workers wishing to pursue alternative employment. Members of the interagency group shall include the Bureau of Labor and Industries, Department of Community Colleges and Workforce Development (CCWD), Oregon Employment Department (OED), the Oregon Watershed Enhancement Board, the Oregon Parks and Recreation Department (OPRD), and the Oregon Economic and Community Development Department (OECDD).
6. Consistent with the collective bargaining agreements, statutes and administrative rules, all state agencies shall seek to hire qualified individuals impacted by the emergency declared in this Executive Order when filling vacancies or making temporary appointments, for a period of one year from the date of this Executive Order.
7. CCWD shall pursue all available retraining opportunities for ocean fishing industry workers wishing to pursue alternative employment and shall coordinate the timely delivery of state workforce services and other human and community services to affected workers and families.
8. OED shall offer re-employment assistance programs to affected ocean fishing industry workers.
9. As in 2006, OPRD shall conduct outreach to displaced employees of the commercial and recreational fishing industries and make them aware of any seasonal positions available this summer at state parks along the coast.
10. Oregon Watershed Enhancement Board shall provide financial resources to support fish habitat enhancement along critical salmon streams in Oregon for the purpose of accelerating the rebuilding of fish populations and creating new and meaningful work opportunities for displaced workers.
11. Oregon Housing and Community Services (OHCS) shall work with the Oregon Food Bank to provide additional food and nutritional support for affected Oregonians. Where possible, OHCS is directed to work with housing partners to provide additional assistance for emergency shelter, rental housing, and permanent housing for affected households in need. OHCS is further directed to work with local community based organizations to provide additional energy assistance and weatherization services to affected Oregonians as appropriate.
12. OECDD shall provide technical assistance to local governments, public ports and businesses that experience adverse effects on their operations or revenues due to this emergency.
13. The Oregon Department of Revenue shall investigate and pursue options for affected Oregonians to obtain income tax credits and refunds and other financial assistance.
14. The Oregon Tourism Commission is directed to actively inform the public of continued recreational fishing opportunities and other tourism activities along the Oregon Coast and to highlight travel to the Oregon Coast, as appropriate within their overall marketing strategies.
15. The Department of Human Services shall continue to provide mental health and treatment services, alcohol and drug treatment services, nutrition programs, domestic violence assistance, and medical assistance to Oregonians in coastal communities with particular attention to the increased needs in coastal communities caused by this emergency.
16. All other state agencies are directed to provide appropriate state resources and to seek any available private and federal dollars to provide emergency assistance to affected individuals, families, businesses and communities and to deliver such assistance in the most expeditious manner.
17. All state agencies specifically referenced in this Executive Order shall report to me within sixty days of the date of this Executive Order about progress made under this Executive Order and every sixty days thereafter until conclusion of the emergency.

EXECUTIVE ORDERS

18. The authority delegated by this order will automatically terminate May 1, 2009, unless otherwise extended or terminated by supplemental order.

Done at Salem, Oregon this 10th day of April, 2008.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

OTHER NOTICES

REQUEST FOR COMMENT PROPOSED APPROVAL OF REMEDIAL ACTIONS TAKEN AT SHORT MOUNTAIN LANDFILL LANE COUNTY, OREGON

COMMENTS DUE: May 30, 2008

PROJECT LOCATION: 84777 Dillard Access Road, Eugene, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to approve a series of measures undertaken by Lane County to remediate groundwater contamination originating from the oldest area of the landfill.

HIGHLIGHTS: Short Mountain Landfill, located south of Eugene, Oregon, recently completed a site investigation and human health and ecological risk assessment undertaken in response to DEQ's solid waste permit requirements. Landfill related chemicals, primarily non-hazardous chemicals such as manganese, had previously been detected in groundwater monitoring wells around the landfill. The purpose of the investigations was to determine the extent of the landfill-related chemicals and whether those chemicals posed a risk to human health or the environment. The investigations found that preventive actions already taken, including capping, leachate collection, and landfill gas collection were successful in mitigating the effects of the chemicals.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eugene office at 1102 Lincoln St, Ste 210, Eugene, OR 97401. To schedule an appointment to review the file or to ask questions, please contact Bill Mason at (541) 687-7427.

Summary information and a copy of "Proposed Remedial Action" report are available in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet. To review this material, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 848 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 848 in the Site ID/Info column. To be considered, written comments should be sent to Bill Mason, Project Manager, at the address listed above or by email at mason.bill@deq.state.or.us, and must be received by 5:00 PM on Friday, May 30, 2008. A public meeting will be held upon written request by ten or more persons or by a group with a membership of 10 or more.

THE NEXT STEP: DEQ will consider all public comments received by the date and time stated above before making a final decision regarding the proposed remedial actions taken at the landfill. A public notice of DEQ's final decision will be issued in this publication.

REQUEST FOR COMMENTS PROPOSED CONDITIONAL NO FURTHER ACTION DECISION FOR PINE BULK PLANT - SOUTH (FORMER) PINE, OREGON

COMMENTS DUE: May 30, 2008 by 5:00 p.m.

PROJECT LOCATION: Sawmill Cutoff Road, Pine

PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.315, the Oregon Department of Environmental Quality (DEQ) is proposing to issue a conditional no further action (NFA) determination for former Pine Bulk Plant — South site located at on Sawmill Cutoff Road in Pine, Oregon.

HIGHLIGHTS: The Voluntary Cleanup Program has reviewed site assessment activities performed at the site. Concentrations of petroleum products detected in the soil and groundwater are below applicable risk based concentrations for the site. However, to insure the ingestion and inhalation from tap water pathway remains incomplete, a deed restriction prohibiting the use of shallow groundwater aquifer will be required as part of the final remedial action for this site.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. Summary information and a copy of "Conditional No Further Action Decision Document" memo are available in DEQ's Environmental Cleanup Site Information

(ECSI) database <http://www.deq.state.or.us/lq/ecsi/ecsi.htm> under Site ID 2606.

To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by May 30, 2008 and sent to Katie Robertson, Project Manager, at the address listed above. Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments. The Next Step: DEQ will consider all public comments received before making a final decision regarding the "Conditional No Further Action" determination.

A CHANCE TO COMMENT ON A PROPOSED REMOVAL ACTION FOR THE SOUTH 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 arsenic contamination in soil at the South 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 at 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 contaminant of concern in the South Unit is arsenic in soils and groundwater. It is unclear what the original source of the arsenic release was. Arsenic was identified based on detection in soil and groundwater during previous field investigations. For both soil and shallow groundwater, the only contaminant at the South Unit is arsenic.

Four applicable technologies were considered as an interim action for the South Unit. The alternatives were: no action, capping contamination in place, excavation of soils to 3 feet, and excavation of soils to greater depths. 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 to a depth of 3 feet. 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 backfilled with uncontaminated gravel and then graded. The remediated area will serve as a parking lot. This action does not address deeper soils including the hot spot soils at depths greater than 3 feet bgs. Groundwater will be addressed by means of site use restrictions. Engineering and institutional controls will be developed to augment this interim action. The Locality of the Facility for the South Unit can be found on Figure 2 of the DEQ Strategy Recommendation 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., May 31, 2008.

REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION DECISION FOR SHELL BULK PLANT (FORMER) HOOD RIVER, OREGON

COMMENTS DUE: May 30, 2008 by 5:00 p.m.

PROJECT LOCATION: 1016 West Industrial Street, Hood River

OTHER NOTICES

PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.315, the Oregon Department of Environmental Quality (DEQ) is proposing to issue a no further action (NFA) determination for former Shell Bulk Plant located at 1016 West Industrial Street in Hood River, Oregon. DEQ is also proposing to de-list the site from the Confirmed Release List (CRL).

HIGHLIGHTS: The Voluntary Cleanup Program has reviewed site assessment activities performed at the site. The site was a petroleum bulk plant from the 1920s to 1992. The site is currently an office and warehouse. Concentrations of petroleum products detected in the soil and groundwater are below applicable risk based concentrations for the site.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. Summary information and a copy of "No Further Action Decision Document" memo are available in DEQ's Environmental Cleanup Site Information (ECSI) database <http://www.deq.state.or.us/lq/ecsi/ecsi.htm> under Site ID 2986.

To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by May 30, 2008 and sent to Katie Robertson, Project Manager, at the address listed above. Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments.

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

REQUEST FOR COMMENTS PROPOSED REMEDIAL ACTION FOR CAMP WITHYCOMBE FIRING RANGES CLACKAMAS, OREGON

COMMENTS DUE: 5:00 pm on May 30, 2008,

PROJECT LOCATION: 10101 SE Clackamas Road, Clackamas, Oregon

PROPOSAL: Pursuant to Oregon Revised Statute ORS 465.320 and Oregon Administrative Rules OAR 340-122-100, the Department of Environmental Quality (DEQ) requests public comment on its proposed cleanup decision regarding soil at the property located at 10101 SE Clackamas Road, Clackamas, Oregon (Camp Withycombe Property). The proposed remedial action for contaminated soil at the former firing ranges portion of the site consists of excavation of metals and explosives-impacted soil, separation of metals from the soil to the extent feasible using particle separation equipment, on-site reuse of treated soil meeting cleanup values for metals, and off-site disposal of soil with elevated metals or explosives at a solid waste landfill. Metals recovered from the separation process would be recycled.

HIGHLIGHTS: Camp Withycombe was originally developed by the federal government in 1909 for use as the Clackamas Rifle Range. It was deeded to the Oregon Military Department in 1956. In recent years the ranges were used by the Oregon National Guard, FBI, Treasury Department, state and local law enforcement agencies, and amateurs. All ranges are now closed. The facility is now used primarily for heavy equipment maintenance, military support, and training. The future Sunrise Corridor Freeway alignment runs northwest to southeast along the base of Mt. Talbert and through the area of the former firing ranges. This area and the southern slopes of Mt. Talbert have been deeded to the Oregon Department of Transportation. Many years of firing range use have resulted in contamination of near-surface soil in the range impact areas with lead, and other metals.

Human health and ecological risk assessments were performed for contaminated soil and risk-based cleanup levels were developed and approved by DEQ. The primary risk driver was determined to be lead. Remediation will consist of excavation of approximately 22,000 cubic yards of soil containing lead and other contaminants at levels above risk-based concentrations, followed by treatment with soil washing to remove larger lead fragments. Approximately 200

tons of lead will be reclaimed for recycling. Treated soil will be reused on site depending on residual lead concentrations or removed for disposal at the Hillsboro Subtitle D Solid Waste Landfill or the Subtitle C Hazardous Waste landfill in Arlington, Oregon. Secondary treatment will be performed on soil failing hazardous waste leaching tests to allow disposal at the Hillsboro Landfill or to meet land disposal restrictions for disposal of hazardous waste.

HOW TO COMMENT: Written comments concerning the remedial action should be sent to Bob Williams at DEQ Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, Oregon 97201. All comments must be received by DEQ by 5:00 pm May 30, 2008. Questions may be directed to Mr. Williams at the above address or by calling (503) 229-6802. Summary information and a copy of the "Staff Report" are available in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet; go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 1705 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 1705 in the Site ID/Info column. The Project Staff Report and DEQ file on the Camp Withycombe Property may also be reviewed at DEQ's Northwest Region office in Portland by contacting Bob Williams at (503) 229-6802.

Upon written request by ten or more persons, or by a group having ten or more members, a public meeting will be held to receive verbal comments on the proposed remedial action.

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

A CHANCE TO COMMENT ON A PROPOSED CONSENT JUDGMENT FOR PROSPECTIVE PURCHASER REMEDIAL ACTIVITIES AT THE FORMER PORTABLE EQUIPMENT SALVAGE COMPANY

COMMENTS DUE: May 31, 2008

PROJECT LOCATION: 10215 and 10281 SE Mather Road, Clackamas, Oregon

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) is proposing to enter into a Consent Judgment for remedial activities with R. S. Davis Recycling, Inc. for the former Portable Equipment Salvage Company property.

HIGHLIGHTS: Portable Equipment Salvage Company (PESC) salvaged copper, lead, and other metals from discarded electrical equipment. Those operations resulted in the release of petroleum hydrocarbons, polynuclear aromatic hydrocarbons, polychlorinated biphenyls (PCBs), and heavy metals. Remedial actions completed at the site in 1993 included the removal of over 28,000 tons of PCB-contaminated soil and the placement of a clean soil and gravel cap on the property.

R. S. Davis owns the adjacent property to the west of the former PESC facility and is working to acquire the PESC property to expand its recycling facility. RSD meets the requirements for DEQ's prospective purchaser program. The Consent Judgment will provide that RSD carry out additional investigation at the former PESC property as well as at the RSD property, and implement any necessary cleanup actions.

The proposed Consent Judgment will provide RSD with a release from liability for claims by the State of Oregon under ORS 465.255, including claims for damages to natural resources, relating to historical releases of hazardous substances at or from the former PESC property. The proposed Consent Judgment will also provide RSD with protection from potential contribution actions by third parties for recovery of remedial action costs associated with historical releases at or from the former PESC property. DEQ retains all existing rights it may have as to all other parties potentially liable for the releases.

HOW TO COMMENT: Written comments concerning the proposed Consent Judgment should be sent to Mike Greenburg at DEQ, 2020 SW 4th Avenue, Suite 400, Portland, Oregon 97201. Comments must be received by DEQ by 5:00 pm May 31, 2008. Questions may

OTHER NOTICES

be directed to Mike Greenburg by calling 503-229-5153 or by email at greenburg.mike@deq.state.or.us. The proposed Consent Judgment and DEQ file on the property may be reviewed at DEQ's Northwest Region office, 2020 SW Fourth Avenue, Suite 400, Portland. For a review appointment call 503-229-6729.

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

REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION DECISION FOR HI DOLLAR JOHN'S (FORMER) THE DALLES, OREGON

COMMENTS DUE: May 30, 2008 by 5:00 p.m.

PROJECT LOCATION: 2365 East 2nd Street, The Dalles

PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.315, the Oregon Department of Environmental Quality (DEQ) is proposing to issue a no further action (NFA) determination for former Hi Dollar John's located at 2365 East 2nd Street in The Dalles, Oregon.

HIGHLIGHTS: The Voluntary Cleanup Program has reviewed site assessment activities performed at the site. The site was a salvage yard until 1992 at which time the property was abandoned. The site is currently vacant. A removal was performed to properly dispose of drums, capacitors, and compressed gas canisters left on-site in 1994. Localized and low concentrations of contaminants were detected in the soil samples collected at the site.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. Summary information and a copy of "No Further Action Decision Document" memo are available in DEQ's Environmental Cleanup Site Information (ECSI) database <http://www.deq.state.or.us/lq/ecsi/ecsi.htm> under Site ID 1590.

To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by May 30, 2008 and sent to Katie Robertson, Project Manager, at the address listed above. Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments.

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

APPROVAL OF ACTIONS NO FURTHER ACTION DECISION EUGENE LINEN SUPPLY

PROJECT LOCATION: 1850 West 6th Avenue, Eugene, Oregon

DECISION: The DEQ has approved no further cleanup action at the Eugene Linen Supply site under OAR 340-122-0205 through 340-122-0360 and pursuant to Risk-Based Cleanups in accordance with OAR 340-122-0244 and 340-122-0250. In addition, the DEQ has determined that no further action is required to address environmental contamination under the Oregon Environmental Cleanup Law, ORS 465.200 et seq. The DEQ has determined that no further action is required because the site no longer poses a risk to human health and the environment as defined in ORS 465.315 with the conditions as presented in the letter of "no further action" for this project. The site will remain on the Confirmed Release List and the Inventory of Hazardous Substance Sites.

HIGHLIGHTS: The subject property was formerly utilized as a fuel service station, car wash, as well as a dry cleaning and laundering facility. Six tanks used to store gasoline, diesel, and Stoddard solvents were located at the property until their removal in 1987. At that time, a release from the Stoddard solvent USTs was reported to the DEQ. Based on recorded information, a consultant excavated visually contaminated soil from the Stoddard solvent UST cavity. The contaminated soil was apparently disposed of at a landfill.

In 2007, Adapt Engineering conducted additional site assessment activities and proposed closure of the USTC and Cleanup projects. Sampling completed in March and November 2007 showed that soil and groundwater do not contain petroleum or solvent-related contaminants at concentrations above DEQ's risk-based standards. The DEQ recommended that no further action be required and requested public comments on the proposed closure during March 2008. No comments were received during the public notice period.

The DEQ has approved the "Conditional No Further Action" for the site. The project files are public record and may be viewed by appointment at DEQ's Eugene office, 1102 Lincoln Street, Suite 210. Questions may also be directed to the Eugene office at 541-686-7838 or 1-800-844-8467. The TTY number for hearing-impaired callers is 541-687-5603.

PROPOSED DELISTING FOR CERTAIN LOTS AT TOWNSEND FARMS AKA TOWNSEND BUSINESS PARK, LOCATED IN FAIRVIEW, OREGON

PUBLICATION DATE: May 1, 2008

COMMENTS DUE: May 31, 2008

PROJECT LOCATION: Birtcher Center at Townsend Way, Fairview, Oregon. Formerly Lots 7,8,9,16 and 17 at 23303 NE Sandy Boulevard, Fairview, Oregon.

PROPOSAL: As required by ORS 465.230 and OAR 340-122-077 and 078, the Department of Environmental Quality (DEQ) invites public comment on the proposed delisting of the Birtcher Center at Townsend Way located on the former lots 7, 8, 9, 16 and 17. The Department recommends that the site be removed from DEQ's Confirmed Release List (CRL) and inventory of hazardous substance sites (Inventory) because it no longer meets the requirements for inclusion for those lists.

HIGHLIGHTS: Birtcher Development and Investments, LLC. (Birtcher) entered into a prospective purchaser agreement (PPA) with DEQ addressing lots 7, 8, 9, 16 and 17 which had been formerly used for agricultural production, including growing and processing berries. This former use involved the application of certain pesticides which remained in soil on the lots. As part of the PPA, Birtcher performed certain activities which included sampling of residual pesticide concentrations in soil prior to construction of commercial buildings, installation of a protective cap, and appropriate management of site soil. The agreed upon activities have now been completed and DEQ has determined that residual concentrations of pesticides in subsurface soil are below levels of concern for direct contact. Based on completion of agreed upon activities and proper documentation of protective residual conditions, DEQ proposed to issue a conditional NFA letter covering the subject property in a March 2008, public comment period. The subject property was placed on the CRL and Inventory in May, 2007. DEQ issued a Conditional No Further Action determination on April 4, 2008.

HOW TO COMMENT: The project file is available for public review. To schedule an appointment, contact Paul Seidel at 503-667-8414 x 55002. Written comments should be sent to the DEQ contact at the Department of Environmental Quality, Northwest Region, 1550 NW Eastman Parkway, Suite 290, Gresham, OR 97030 by May 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. Please notify DEQ if you need copies of written materials in an alternative format (e.g., Braille, large print, etc.). To make these arrangements, contact DEQ Office of Communication and Outreach at 503-229-5317. Additional information is also available at: <http://www.deq.state.or.us/news/publicnotices/PN.asp>

PROPOSED NO FURTHER ACTION DETERMINATION LA PINE HIGHWAY CENTER, LA PINE, OREGON

COMMENTS DUE: May 31, 2008

PROJECT LOCATION: 51425 Highway 97, LaPine, Oregon

OTHER NOTICES

PROPOSAL: The Department of Environmental Quality is proposing to issue a determination of No Further Action required for the leaking underground storage tank (LUST) cleanup at the LaPine Highway Center. The contamination was discovered during excavation to decommission underground storage tanks. This determination is based on approval of investigation and remedial measures conducted to date. Public notification is required by ORS 465.320.

HIGHLIGHTS: Petroleum contaminated soil and groundwater were discovered in early 1991 while decommissioning three of the six USTs at the site. Approximately 130 cubic yards of petroleum contaminated soil was excavated and treated on-site. Three groundwater monitoring wells were installed in 1995. The remaining USTs were decommissioned in 1998. A groundwater monitoring program concluded in 2004. Based on results of a supplemental site characterization conducted in April 2003, as well as data obtained during the groundwater monitoring events, the remaining contamination does not exceed acceptable risk levels. The Department has therefore determined that no further action is required at this site.

HOW TO COMMENT: Comments and questions, by phone, fax, U.S. Mail, or email, should be directed to:

Joe Klemz, Project Manager

Phone: (541)388-6146, ext. 237

Fax: (541)388-8283

Email: klemz.joe@deq.state.or.us

To schedule an appointment to view the site file, please contact Mr. Klemz as well. Written comments must be received by May 31, 2008.

THE NEXT STEP: DEQ will consider all comments received. A final decision concerning the proposed remedial actions will be made after consideration of public comments.

PROPOSED NO FURTHER ACTION DETERMINATION ODOT — BASQUE MAINTENANCE STATION DRYWELL REMOVAL, BASQUE, OREGON

COMMENTS DUE: May 31, 2008

PROJECT LOCATION: Highway 95, Malheur County

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to issue a No Further Action determination regarding excavation and offsite disposal of contaminated soil from a drywell at the Basque Maintenance Station operated by the Oregon Department of Transportation (ODOT). This determination is based on approval of investigation and remedial measures conducted to date. Public notification is required by ORS 465.320.

HIGHLIGHTS: ODOT's Basque Maintenance Station is located in Malheur County on Highway 95, approximately 30 miles north of the Nevada border. ODOT removed a drywell from this facility in September-October 1997. In 2007, ODOT requested that DEQ review sample results and other information to determine whether a No Further Action determination could be issued.

The drywell consisted of a 4-foot diameter, 12-foot long vertical concrete pipe. ODOT excavated approximately 30 cubic yards of contaminated soil and backfilled the excavation with clean native soil. The contaminated soil and concrete were taken to the Burns-Hines Landfill for disposal. Sample results collected following excavation indicated that residual contamination does not exceed safe levels.

HOW TO COMMENT: Comments and questions, by phone, fax, mail or email, should be directed to:

Bob Schwarz, Project Manager

Phone: 541-298-7255, ext. 30

Fax: 541-298-7330

Email: Schwarz.bob@deq.state.or.us

To schedule an appointment or to obtain a copy of the staff report, please contact Mr. Schwarz as well. Written comments should be sent by May 31, 2008.

THE NEXT STEP: DEQ will consider all comments received. A final decision concerning the proposed partial No Further Action determination will be made after consideration of public comments.

REQUEST FOR COMMENTS PROPOSED FINAL CLEANUP FOR SELMET

COMMENTS DUE: 5 pm, May 30, 2008

PROJECT LOCATION: 33992 Seven-Mile Lane, Albany

PROPOSAL: Per OAR 340-120-0078, a 30-day public comment period is required for a proposed final cleanup action before the action can be approved by the DEQ. Selmet Inc., located south of Albany, is proposing a final cleanup action to address contaminants in groundwater originating from beneath the site.

HIGHLIGHTS: Selmet Inc. operates a titanium casting plant south of Albany. The property has been in industrial use since 1969. Groundwater contamination originating from solvent use on the Selmet property has moved off site to the west of the facility. The contaminants of concern, tetrachloroethene (PCE) and trichloroethene (TCE) are components of a degreasing solvent which was historically used at the site.

West of the site, approximately 1 mile, are domestic wells that have not been contaminated, but could potentially be contaminated, if the contamination is not addressed. Groundwater flows westward beneath the site. An existing treatment system has been in operation at the site since 2000 which removes contaminated groundwater from the subsurface near the facility. In order to complete the cleanup and address contamination that is not captured by the existing treatment system, Selmet is proposing a final cleanup action.

The proposed cleanup consists of two parts:

1. Increase the capacity of the existing treatment system, which will not only contain the existing contamination beneath the site from moving farther off-site but it will also remove the contamination from the groundwater beneath the site.

2. The second part of the proposed cleanup is designed to reduce the contaminants in the deep groundwater zone which is moving westward towards the domestic wells. It consists of a series of wells that will add vegetable oil and other amendments to the groundwater. This process will promote the natural degradation of the contaminants.

HOW TO COMMENT: A Staff Report presenting details about the site and the proposed cleanup action was prepared by DEQ, which supports the decision to approve the final cleanup action. The staff report is available for review, electronically, by contacting the DEQ project manager, Bryn Thoms at 541-687-7424 or at thoms.bryn@deq.state.or.us, or the report can be viewed in person at the DEQ Eugene office or at the DEQ Salem office by appointment. The Eugene office address and contact information is presented to the right and the Salem office is located at 750 Front Street NE, Suite 120, Salem, OR 97301, phone no. 800-349-7677.

Comments on the proposed cleanup need to be received by the Eugene Office, attn: Bryn Thoms, by 5 pm on May 30, 2008. Fax or email comments are acceptable.

THE NEXT STEP: Upon completion of the comment period, the comments will be addressed. Once the comments have been adequately addressed, the DEQ may approve, modify, or deny the proposed cleanup action. Selmet plans to initiate cleanup during the summer of 2008 if the proposed cleanup is approved.

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

People with hearing impairments may call DEQ's TTY number, 541-687-5603.

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

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Board of Chiropractic Examiners Chapter 811

Rule Caption: Add unprofessional conduct language to Certified Chiropractic Assistants rule. Clarifies DCs can order but not perform contrast imaging with radio opaque substances.

Date:	Time:	Location:
5-15-08	1:30 p.m.	Western States Chiropractic College 2900 NE 132nd Ave. Portland, OR 97230

Hearing Officer: Dave McTeague, Exec. Director

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684

Proposed Amendments: 811-010-0110, 811-030-0020

Last Date for Comment: 5-15-08

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. 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

Address: Board of Chiropractic Examiners, 3218 Pringle Rd. SE - Suite 150, Salem, OR 97302-6311

Telephone: (503) 378-5816

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Board of Naturopathic Examiners Chapter 850

Rule Caption: Defines terms used in ORS Chapter 685 and OAR Chapter 850.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.010, 685.020

Proposed Amendments: 850-010-0005

Last Date for Comment: 5-30-08

Summary: Defines direct supervision and medical specialist as used in ORS 685 and OAR 850.

Rules Coordinator: Anne Walsh

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

Telephone: (971) 673-0193

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Rule Caption: Adds terms that are illegal to use by persons not lawfully licensed by this Board.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.010, 685.020

Proposed Amendments: 850-050-0120

Last Date for Comment: 5-30-08

Summary: Clarify that the use of certain terms is illegal unless the person is licensed by the Board or meets specific criteria set in statute and rule.

Rules Coordinator: Anne Walsh

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

Telephone: (971) 673-0193

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Rule Caption: Lists substances on Formulary Compendium for Naturopathic Physicians and add to Classifications.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Proposed Amendments: 850-060-0225, 850-060-0226

Last Date for Comment: 5-30-08

Summary: 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

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

Telephone: (971) 673-0193

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Board of Nursing Chapter 851

Rule Caption: Nursing Education Rules Revised.

Date:	Time:	Location:
6-12-08	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: James McDonald, Board President

Stat. Auth.: ORS 678.150 & 678.340

Stats. Implemented: ORS 678.150 & 678.340

Proposed Amendments: 851-021-0005, 851-021-0010, 851-021-0015, 851-021-0020, 851-021-0025, 851-021-0040, 851-021-0045, 851-021-0050, 851-021-0055, 851-021-0060, 851-021-0065, 851-021-0070, 851-021-0090, 851-021-0120

Last Date for Comment: 6-10-08, 5 p.m.

Summary: These rules cover the standards for the approval of educational programs in nursing preparing candidates for licensure as practical or registered nurses. These amendments are part of a periodic review.

PLEASE NOTE: This hearing is a continuation of the hearing that took place on April 10, 2008.

Rules Coordinator: KC Cotton

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

Telephone: (971) 673-0638

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Rule Caption: Standards and Scope of Practice for RNs and LPNs Updated.

NOTICES OF PROPOSED RULEMAKING

Date: 6-12-08
Time: 9 a.m.
Location: 17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: James McDonald, Board President
Stat. Auth.: ORS 678.150
Stats. Implemented: ORS 678.010, 678.111, 678.117 & 678.150
Proposed Adoptions: 851-045-0030, 851-045-0040, 851-045-0050, 851-045-0060, 851-045-0070, 851-045-0080, 851-045-0090, 851-045-0100
Proposed Repeals: 851-045-0000, 851-045-0005, 851-045-0010, 851-045-0015, 851-045-0016, 851-045-0020, 851-045-0025
Last Date for Comment: 6-10-08, 5 p.m.
Summary: These rules cover the standards and scope of practice for the Licensed Practical Nurse and Registered Nurse. The amendments are part of a periodic review.

PLEASE NOTE: This is a continuation of the hearing that took place on April 10, 2008. This hearing was originally scheduled for February 14, 2008 and was published in the January 2008 and March 2008 issues of the Oregon Bulletin.

Rules Coordinator: KC Cotton
Address: Board of Nursing, 17938 SW Upper Bones Ferry Rd., Portland, OR 97224
Telephone: (971) 673-0638

Rule Caption: Advanced Practice Formulary Abolished.

Date: 6-12-08
Time: 9 a.m.
Location: 17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: James McDonald, Board President
Stat. Auth.: ORS 678.385 & 678.390
Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385 & 678.390
Proposed Amendments: 851-056-0004, 851-056-0006, 851-056-0010, 851-056-0012, 851-056-0016, 851-056-0018
Last Date for Comment: 6-10-08, 5 p.m.
Summary: These rules cover the authority of the Clinical Nurse Specialists and Nurse Practitioner to prescribe and dispense drugs.
Rules Coordinator: KC Cotton
Address: Board of Nursing, 17938 SW Upper Bones Ferry Rd., Portland, OR 97224
Telephone: (971) 673-0638

Rule Caption: Rules Revised to Remove the Requirement for Social Security Number and Course Summary Form.

Date: 6-12-08
Time: 9 a.m.
Location: 17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: James McDonald, Board President
Stat. Auth.: ORS 678.440 & 678.442
Stats. Implemented: ORS 678.440, 678.442 & 678.444
Proposed Amendments: 851-061-0050, 851-061-0070, 851-061-0100
Last Date for Comment: 6-10-08, 5 p.m.
Summary: These rules cover the standards for training programs for Nursing Assistants and Medication Aides.
Rules Coordinator: KC Cotton
Address: Board of Nursing, 17938 SW Upper Bones Ferry Rd., Portland, OR 97224
Telephone: (971) 673-0638

Board of Optometry Chapter 852

Rule Caption: Define contact lens; establishes optometric authority to use, prescribe and dispense therapeutic contact lenses.

Date: 6-13-08
Time: 1:30 p.m.
Location: 1900 Hines St. Mezzanine Level Confr. Rm. Salem, OR

Hearing Officer: Scott Walters, OD, Pres.
Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.010, 683.240, 683.270, 683.335 & 182.466
Proposed Amendments: Rules in 852-010, 852-080
Last Date for Comment: 6-13-08
Summary: 852-010 — Establishes definition of various use contact lenses. 852-080 — Establishes the authority for Doctors of optometry to use, prescribe and dispense therapeutic lenses that include pharmaceutical agents listed on the topical formulary.
Rules Coordinator: David W. Plunkett
Address: Board of Optometry, PO Box 13967, Salem, OR 97309
Telephone: (503) 399-0662, ext. 23

Construction Contractors Board Chapter 812

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

Stat. Auth.: ORS 25.990, 36.224, 812.310 - 183.500, 813.310 - 183.545, 183.415, 670.310, 670.605, 701.085 (2005), 701.068, 701.088, 701.122, 701.133, 701.235, 701.238, 701.280, 701.305, 701.315, 701.320, 701.330, 701.335, 701.530, 701.992 & 1999 OL Ch. 849, sec. 8
Stats. Implemented: ORS 25.270, 25.785, 25.990, 36.224, 36.228, 36.230, 36.232, 36.600 - 36.740, 36.690, 36.700, 36.705, 36.710, 87.058, 87.093, 183, 183.335, 183.341, 183.413, 183.415, 183.417, 183.425, 183.440, 183.445, 183.452, 183.457, 183.464, 183.450, 183.460, 183.470, 183.482, 183.645, 183.482, 448.115, 448.279, 643.116, 656.027, 670.310, 671.510 - 671.710, 670.600, 670.605, 701, 701.005, 701.010, 701.021, 701.026, 701.035, 701.046, 701.056, 701.063, 701.068, 701.073, 701.085 (2005), 701.068, 701.073, 701.088, 701.091, 701.094, 701.098, 701.102, 701.105, 701.117, 701.122, 701.130, 701.131, 701.131 - 701.180, 701.133, 701.139, 701.140, 701.143, 701.145, 701.145, 701.146, 701.148, 701.149, 701.150, 701.153, 701.180, 701.225, 701.227, 701.235, 701.238, 701.305, 701.315, 701.320, 701.325, 701.330, 701.335 & 701.530
Proposed Amendments: 812-001-0100, 812-001-0140, 812-001-0200, 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, 812-004-0320, 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, 812-010-0520, 812-012-0110

Last Date for Comment: 6-2-08, 5 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: 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
Address: Construction Contractors Board, 700 Summer St. NE, Suite 300, Salem, OR 97310
Telephone: (503) 378-4621, ext. 4077

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Department of Administrative Services
Chapter 125

Rule Caption: Rules for Statewide Facility Planning Process.

Date:	Time:	Location:
5-16-08	10-10:30 a.m.	2600 State St., Tillamook Rm. Salem, OR

Hearing Officer: Robin Kirkpatrick

Stat. Auth.: ORS 183 & 276

Other Auth.: SB 90

Stats. Implemented: ORS 183 & 276

Proposed Adoptions: 125-125-0500, 125-0125-0600

Proposed Amendments: 125-0125-0050, 125-0125-0100, 125-125-0150, 125-0125-0250, 125-125-0300, 125-125-0350, 125-0125-0400

Last Date for Comment: 5-16-08, 5 p.m.

Summary: This rule provides a process for developing, planning and evaluating projects engaged in capitol construction on state owned property within the City of Salem. Amendments are primarily house-keeping changes to improve clarity and update references. OAR 125-125-0500 adopts the Area Plan Review, Adoption, Amendment and Repeal Process. OAR 125-125-0600 adopts a fee for copies of records.

Rules Coordinator: Yvonne Hanna

Address: Department of Administrative Services, 155 Cottage St. NE, Salem, OR 97301

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

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Department of Administrative Services,
Capitol Planning Commission
Chapter 110

Rule Caption: Rules for Area Plan Development Standards.

Date:	Time:	Location:
5-16-08	10-10:30 a.m.	2600 State St., Tillamook Rm. Salem, OR

Hearing Officer: Robin Kirkpatrick

Stat. Auth.: ORS 183, 197 & 276

Other Auth.: SB 90

Stats. Implemented: ORS 183, 197 & 276

Proposed Adoptions: 110-010-0034, 110-010-0039

Proposed Amendments: 110-010-0030

Proposed Repeals: 110-010-0035, 110-010-0040, 110-010-0045, 110-010-0050, 110-010-0055, 110-010-0060

Last Date for Comment: 5-16-08, 5 p.m.

Summary: This rule amendment relates to the revision of the Development Standards adopted by the Capitol Planning Commission and last updated in 1988. The rule revises the current Area Plan Development Standards formerly known as the Development Standards affecting future development and uses in the Salem area.

Rules Coordinator: Yvonne Hanna

Address: Capitol Planning Commission, 155 Cottage St. NE, Salem, OR 97301

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

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Rule Caption: Rules for Adoption of the Southeast Salem Area Plan and Fairview/Hillcrest Area Plan.

Date:	Time:	Location:
5-16-08	10-10:30 a.m.	2600 State St., Tillamook Rm. Salem, OR

Hearing Officer: Robin Kirkpatrick

Stat. Auth.: ORS 183 & 276

Other Auth.: SB 90

Stats. Implemented: ORS 183 & 276

Proposed Amendments: 110-040-0012, 110-040-0014

Proposed Repeals: 110-040-0015, 110-040-0020

Last Date for Comment: 5-16-08, 5 p.m.

Summary: This rule amendment relates to the Southeast Salem Area Plan formerly known as the Oregon State Corrections Area Plan adopted by the Capitol Planning Commission May 8, 1985. The rule revises the current Area Plan adopting a new plan and standards affecting future development and uses in the Southeast Salem Area.

Rules Coordinator: Yvonne Hanna

Address: Capitol Planning Commission, 155 Cottage St. NE, Salem, OR 97301

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

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Department of Administrative Services,
Oregon Educators Benefit Board
Chapter 111

Rule Caption: Establishes Oregon Educators Benefit Board's process for developing benefit plan designs comparable to district plan designs, and the process for participating districts' selection of OEBB benefit plans.

Date:	Time:	Location:
5-23-08	8 a.m.	OEBB, 1225 Ferry St. SE Salem, OR

Hearing Officer: Denise Hall, Deputy Administrator

Stat. Auth.: Ch. 00007, OL 2007

Stats. Implemented:

Proposed Adoptions: 111-030-0001, 111-030-0005

Last Date for Comment: 5-30-08

Summary: Establishes Oregon Education Benefit Board's process for developing benefit plan designs comparable to district plan designs, and the process for participating districts' selection of OEBB benefit plans.

Rules Coordinator: Rose Mann

Address: Department of Administrative Services, Oregon Educators Benefit Board, 1225 Ferry St. SE, Salem, OR 97306

Telephone: (503) 378-4606

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Rule Caption: Establishes Oregon Educators Benefit Board's policies regarding members' declination of benefits.

Date:	Time:	Location:
5-23-08	8-9 a.m.	OEBB, 1225 Ferry St. SE Salem, OR 97306

Hearing Officer: Denise Hall

Stat. Auth.: 2007 OL Ch. 00007

Stats. Implemented: 2007 OL, Ch. 00007, Sec. 3 & 13

Proposed Adoptions: 111-040-0050

Last Date for Comment: 5-30-08

Summary: Establishes Oregon Educators Benefit Board's policies regarding members' declination of benefits.

Rules Coordinator: Rose Mann

Address: Department of Administrative Services, Oregon Educators Benefit Board, 1225 Ferry St. SE, Salem, OR 97306

Telephone: (503) 378-4606

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Rule Caption: Defines terms used by the Oregon Educators Benefit Board in benefit plan design and selection.

Date:	Time:	Location:
5-23-08	8-9 a.m.	1225 Ferry St. SE Salem, OR 97306

Hearing Officer: Staff

Stat. Auth.: Ch. 00007, OL 2007

Stats. Implemented: Sec. 1, Ch. 00007, OL 2007

Proposed Amendments: 111-010-0015

Last Date for Comment: 5-30-08

NOTICES OF PROPOSED RULEMAKING

Summary: Establishes definitions for “actuarial value,” “comparable cost,” and “comparable plan design” used by the Oregon Educators Benefit Board in the design and selection of benefit plans.

Rules Coordinator: Rose Mann

Address: Department of Administrative Services, Oregon Educators Benefit Board, 1225 Ferry St. SE, Salem, OR 97306

Telephone: (503) 378-4606

Department of Agriculture Chapter 603

Rule Caption: Updates scientific name of codling moth in Hood River control area.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.510 & 570.305

Proposed Amendments: 603-052-0265

Last Date for Comment: 6-3-08

Summary: The proposed change would update the scientific name of codling moth in Hood River control area rule: Codling Moth *Carpocapsa pomonella* would be changes to *Cydia pomonella*.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

Department of Agriculture, Oregon Dairy Products Commission Chapter 617

Rule Caption: Amends Oregon Dairy Products Commission producer assessment rate on milk and cream.

Date:	Time:	Location:
5-20-08	10 a.m.	Oregon Dairy Center 10505 SW Barbur Blvd. Portland, OR 97219

Hearing Officer: Pete Kent

Stat. Auth.: ORS 576.304(2), 576.325(2), 576.325(3)(a)

Other Auth.: OAR 617-001-0000

Stats. Implemented: ORS 576.304 & 576.325

Proposed Amendments: 617-010-0045

Last Date for Comment: 5-20-08, Close of Hearing

Summary: 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

Address: 10505 SW Barbur Blvd., Portland, OR 97219

Telephone: (503) 229-5033

Department of Agriculture, Oregon Grains Commission Chapter 679

Rule Caption: Per Diem Compensation.

Date:	Time:	Location:
6-24-08	10 a.m.	Oregon Wheat Growers League Conference. Rm. 115 SE 8th St. Pendleton, OR 97801

Hearing Officer: Tammy Dennee

Stat. Auth.: ORS 292.45(1)

Stats. Implemented: ORS 292.45(1)

Proposed Adoptions: 979-030-0050

Last Date for Comment: 6-24-08

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

(2) The rate of compensation is limited to #30 per day, pursuant to ORS 292.495(1).

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

Rules Coordinator: Tammy L. Dennee

Address: Department of Agriculture, Oregon Grains Commission, PO Box 1086, Pendleton, OR 97801

Telephone: (541) 276-4609

Department of Agriculture, Oregon Ryegrass Growers Seed Commission Chapter 657

Rule Caption: Increases the assessment rate.

Date:	Time:	Location:
5-20-08	6 p.m.	Old Armory Bldg., Conference Rm. 4th & Lyon Albany, OR

Hearing Officer: Mike Hayes

Stat. Auth.: ORS 576.304 & 576.325–576.365

Stats. Implemented: ORS 576.325–576.365

Proposed Amendments: 657-010-0015

Last Date for Comment: 5-20-08, 12 p.m.

Summary: Increases the assessment for all ryegrass seed grown in Oregon from 10 cents per cwt to 12 cents per cwt, clean seed basis.

Rules Coordinator: Lisa Ostlund

Address: Department of Agriculture, Ryegrass Seed Growers Commission, 4093 12th St. Cutoff SE, Salem, OR 97302

Telephone: (503) 364-2944

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

Rule Caption: Revises continuing education requirements for licenses in the boiler and pressure vessel program.

Date:	Time:	Location:
5-20-08	10 a.m.	1535 Edgewater St NW Salem, OR 97304

Hearing Officer: Celina Patterson

Stat. Auth.: ORS 455.117

Stats. Implemented: ORS 455.117

Proposed Amendments: Rules in 918-030

Last Date for Comment: 5-23-08, 5 p.m.

Summary: The proposed rules revise continuing education requirements for license holders in the boiler and pressure vessel program. The proposed rule sets requirements for the following license categories: Class 2 is set at eight hours of continuing education during each three-year cycle; Class 3, Class 4, Class 5, Class 5A, and Class 5B are set at twenty-four (24) hours of continuing education during each three-year cycle.

Rules Coordinator: Shauna Parker

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

Telephone: (503) 373-7438

Rule Caption: Amends division rules for fee refunds and deletes erroneous citation to a DMV definition.

Date:	Time:	Location:
5-20-08	11 a.m.	1535 Edgewater St NW Salem, OR

Hearing Officer: Celina Patterson

Stat. Auth.: ORS 293.445, 445.680, 446.160, 446.176, 446.400, 446.646, 455.170, 455.680, 456.755, 456.770, 456.837 & 480.630

NOTICES OF PROPOSED RULEMAKING

Stats. Implemented: ORS 293.445, 446.160, 446.176, 446.240, 446.646, 455.680 & 480.630

Proposed Amendments: 918-001-0240, 918-225-0605, 918-515-0300, 918-525-0510, 918-550-0010, 918-600-0030, 918-650-0030

Proposed Repeals: 918-001-0230

Last Date for Comment: 5-23-08, 5 p.m.

Summary: Repeals unnecessary language related to fee payment and refunds; provides for refunds of amounts over \$25.00 without a written request for refund; repeals erroneous citation to a DMV statute.

Rules Coordinator: Shauna Parker

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

Telephone: (503) 373-7438

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

Rule Caption: Criminal Records Check and Fitness Determination Rules.

Date: 5-27-08	Time: 9 a.m.	Location: Conference Rm. F (basement) Labor & Industries Bldg. 350 Winter St. NE Salem, OR
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Hearing Officer: Fred Bruyns

Stat. Auth.: ORS 705.141, 181.534 & 705.135

Stats. Implemented: ORS 705.141 & 181.534

Proposed Adoptions: 440-007-0200, 440-007-0210, 440-007-0230, 440-007-0240, 440-007-0250, 440-007-0260, 440-007-0270, 440-007-0275, 440-007-0280, 440-007-0285, 440-007-0290, 440-007-0300

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

Summary: The proposed rules establish procedures and processes for the Department of Consumer and Business Services (DCBS) to perform criminal records checks and use the information obtained to evaluate the fitness of: current employees seeking to change jobs, applicants applying for employment with the department, or volunteers, contractors and vendors seeking to provide services to the department (collectively, "applicant"). The rules require applicants to provide personal information to facilitate criminal records checks and establish procedures to keep criminal history information confidential. The rules specify the crimes that DCBS will consider when making determinations about the fitness of applicants to hold a position or provide services within the department and establish procedural rules for challenges to the department's fitness determinations.

Address questions to Salvador Llerenas, Chief Human Resources Officer, phone 503-947-7286, fax 503-378-5969 or by e-mail, Salvador.llerenas@state.or.us.

Proposed rules are available on the DCBS website: <http://www.oregon.gov/DCBS/DIR/rules.shtml> or from Kristen Miller, Rules Coordinator, phone 503-947-7866, fax 503-378-6444; e-mail Kristen.i.miller@state.or.us

Rules Coordinator: Kristen Miller

Address: Department of Consumer and Business Services, Director's Office, 350 Winter St. NE, PO Box 14480, Salem, OR 97309
Telephone: (503) 947-7866

Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Fingerprinting requirement for criminal check of applicants for insurance license and license renewal.

Date: 5-28-08	Time: 2 p.m.	Location: 350 Winter St. NE Conf. Rm. B (basement) Salem, OR
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Hearing Officer: Lewis Littlehales

Stat. Auth.: ORS 183.534, 705.135 & 731.244

Stats. Implemented: ORS 181.534, 705.141, 744.001, 744.059 & 744.326

Proposed Adoptions: 836-072-0001 to 836-072-0050

Last Date for Comment: 6-9-08

Summary: This rulemaking implements ORS 705.141, which authorizes the Department of Consumer and Business Services to require fingerprints of a person applying for issuance or renewal of a license as an insurance producer, insurance consultant, adjuster, life settlement provider or life settlement broker, in connection with a request for a state or nationwide criminal records check.

Rules Coordinator: Sue Munson

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

Telephone: (503) 947-7272

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

Rule Caption: Proposed rules affecting workers' compensation insurance, claims processing, medical treatment, and return-to-work assistance.

Date: 5-19-08	Time: 9 a.m.	Location: Rm. 260 (2nd Flr.) Labor & Industries Bldg. 350 Winter St. NE Salem, OR
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Hearing Officer: Fred Bruyns

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656

Proposed Adoptions: 436-050-0025

Proposed Amendments: Rules in 436-001, 436-009, 436-010, 436-015, 436-050, 436-160, 436-030-0003, 436-040-0003, 436-045-0003, 436-110-0240, 436-110-0320, 436-110-0330

Proposed Repeals: 436-040-0100

Last Date for Comment: 5-22-08

Summary: General changes to OAR chapter 436: The agency proposes to correct typographical and citation errors, delete duplicate requirements, clarify or relocate some provisions, and streamline processes. To the extent that these changes may substantially affect the meaning of the rules, they are described below.

The agency proposes to amend OAR chapter 436, division 001, "Procedural Rules Governing Rulemaking and Hearings." These proposed rules address: The applicability of the rules; notice of rulemaking; distribution of exhibits; content of exceptions; stay of director review; time limits for attorneys to submit statements of services; and administrative law judge authority to approve settlements and dismiss cases.

The agency proposes to amend OAR chapter 436, division 009, "Oregon Medical Fee and Payment Rules." These proposed rules address: Adoption of updated medical fee schedules and resources for the payment of health care providers; time frames for refunds of overpaid medical bills and related appeal rights; compensability of lumbar artificial disc replacements; electronic data interchange medical reporting requirements; adjustment of the conversion factors for evaluation/management (increase) and surgery (decrease); reduction of the maximum allowable fee for brand and generic drugs from 88% to 83.5% of the average wholesale price; and reduction of the dispensing fee from \$8.70 to \$2.00.

The agency proposes to amend OAR chapter 436, division 010, "Medical Services." These proposed rules address: Treatment and time-loss authority time limits applicable to several health care provider types; how the enrollment of a nonsubject worker in an MCO affects the worker's maximum number of choices of attending physician; contraindications to lumbar artificial disc replacement; and requirements for the worker's social security number on Form 827.

NOTICES OF PROPOSED RULEMAKING

The agency proposes to amend OAR chapter 436, division 015, “Managed Care Organizations” (MCOs). These proposed rules address: MCO certification requirements relevant to the definition of the terms “group” (of medical service providers) and “non-qualifying employer”; requirements for MCOs to contract with multiple insurers; documentation requirements for prospective MCOs (applicants); MCO quarterly data reporting; wording of appeal rights notices that MCOs must provide to parties that may appeal an MCO’s decision; appeal time frames; and the process for making complaints about rule violations.

The agency proposes to amend OAR chapter 436, division 030, “Claim Closure and Reconsideration,” division 040, “Workers with Disabilities Program,” and division 045, “Reopened Claims Program.” These proposed rules: Correct the applicability provisions in rules 030-0003, 040-0003, and 045-0003; and repeal OAR 436-040-0100, “Suspension and Revocation of Authorization to Issue Guaranty Contracts” (because this rule duplicates OAR 436-050-0015).

The agency proposes to amend OAR chapter 436, division 050, “Employer/Insurer Coverage Responsibility.” These proposed rules address: The definition of “complete records”; service of penalty orders; the definition of “owner of the private home” to include any person related by an Oregon registered domestic partnership; effect on a guaranty contract of an employer’s cancellation of coverage; in-state claims processing requirements and allowance for claims to be “dispatched” from any location, record-keeping, including record-keeping for supplemental disability benefits; elimination of 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; that excess insurance coverage may include a deductible endorsement acceptable to the director; time frames for a self-insured municipality to provide its annual report to the director; notice to the director when the self-insured employer changes its operation in a manner that affects its workers’ compensation claims liability; and in-state record-keeping, claims processing, auditing procedures, and required reporting of contact information specific to self-insured employers.

The agency proposes to amend OAR chapter 436-110, “Preferred Worker Program.” These proposed rules address: Issuance of Preferred Worker cards to workers determined eligible before claim closure; and time frames for insurers to request claim cost reimbursement from the Workers’ Benefit Fund.

The agency proposes to amend OAR chapter 436-160, “Electronic Data Interchange.” These proposed rules address: Requirements for trading partner agreements; address reporting requirements; adding and deleting coverage for non-subject workers; time frames for notice to the director of guaranty contract terminations (correction to ten days from seven days to be consistent with requirements in OAR 436-050); elimination of the requirement that insurers submit cancellations of medical bills before resubmitting; and EDI medical reporting requirements.

Address questions to:

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

Proposed rules are available on the Workers’ Compensation Division’s Web site: <http://wcd.oregon.gov/policy/rules/rules.html#proprules> or from WCD Publications, 503-947-7627 or fax 503-947-7630.

Rules Coordinator: Fred Bruyns

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

Telephone: (503) 947-7717

Department of Corrections Chapter 291

Rule Caption: Marriages or Domestic Partnership Solemnization Ceremonies for Inmates in DOC Facilities.

Stat. Auth.: ORS 137.285, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137.285, 179.040, 423.020, 423.030, 423.075 & 2007 OL, Ch. 99

Proposed Amendments: 291-133-0005 – 291-133-0035

Proposed Repeals: 291-133-0045

Last Date for Comment: 5-26-08

Summary: The amendments are necessary to modify the rules to comply with HB 2007 (Oregon Family Fairness Act), and permit inmates who have entered into a domestic partnership to participate in a solemnization ceremony in a Department of Corrections facility.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Rule Caption: Incoming Mail Services for Inmates Incarcerated in Department of Corrections Facilities.

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

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

Proposed Amendments: 291-131-0025

Last Date for Comment: 5-26-08

Summary: This proposed amendment will permit inmates incarcerated in Department of Corrections facilities to receive used books through the inmate mail system.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Rule Caption: Rules Violations for Prohibited Inmate Conduct.

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

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

Proposed Amendments: 291-105-0015

Last Date for Comment: 5-26-08

Summary: This rule modification is necessary to update and re-define rule violations of prohibited conduct for inmates in Department of Corrections facilities. The rule violations have been renumbered to provide consistency for any future revisions.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Department of Energy Chapter 330

Rule Caption: Amend Business Energy Tax Credit (BETC) Program for Renewable Energy Equipment Manufacturing Facilities.

Date:	Time:	Location:
5-29-08	9:30 a.m.	Oregon Dept. of Energy 625 Marion St. NE Salem, OR

Hearing Officer: John Kaufman

Stat. Auth.: ORS 469.040(1)(d), 469.185–469.225 & 2008 OL Ch. 29

Stats. Implemented: ORS 469.185–469.225

Proposed Amendments: 330-090-0105, 330-090-0110, 330-090-0120, 330-090-0130, 330-090-0135, 330-090-0140, 330-090-0150

Last Date for Comment: 6-2-08

Summary: This rulemaking is to implement changes to the Business Energy Tax Credit Program mandated by Or Laws 2008, Ch. 29 (House Bill 3619), as well as provisions related to renewable energy equipment manufacturing facilities in Or Laws 2007, Ch. 843 (House Bill 3201) that were not included in the December 2007 and March 2008 rulemakings due to the complexity of the issue and an understanding that the 2008 legislative session would not be reconsidering these provisions. The proposed rulemaking would:

NOTICES OF PROPOSED RULEMAKING

- Establish rules for the renewable energy manufacturing facility eligibility, including but not limited to:
 - raising the maximum eligible cost to \$40 million;
 - establish standards for determining distinct facility characteristics;
 - establish criteria to determine certified costs for a renewable energy resource equipment manufacturing facility when the economic and revenue forecasts meet the criteria for economic downturn set out in the statute;
 - establish criteria to determine when a facility does not possess the likelihood of success;
 - establish the criteria to determine when a facility is not likely to increase employment in Oregon to a minimum threshold level; and
 - establish criteria to estimate whether an applicant is unlikely to base or expand a facility in Oregon on allowance of the tax credit.
- Make editorial and housekeeping changes to OAR 330-090-0105 to OAR 330-090-0150, as needed.

Rules Coordinator: Kathy Stuttaford

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

Telephone: (503) 378-4128

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Department of Environmental Quality
Chapter 340

Rule Caption: Authorizing the Environmental Quality Commission to implement the Clean Air Act requirements for agriculture in Oregon.

Date: 5-19-08 **Time:** 6:30 p.m. **Location:** DEQ HQ, 811 SW 6th Ave. Portland, OR

Hearing Officer: Staff

Stat. Auth.: ORS 468.020 & 468A.020

Stats. Implemented: ORS 468A.020

Proposed Amendments: 340-200-0030, 340-200-0040, 340-210-0205, 340-264-0040

Last Date for Comment: 5-23-08, 5 p.m.

Summary: The 2007 Legislature passed SB 235 amending ORS 468A.020, 468A.550 and 561.400. The amendments to ORS 468A.020 allow regulation of air emissions from agriculture to the extent necessary to comply with the federal Clean Air Act (CAA). The Oregon Department of Environmental Quality (DEQ) is proposing to align Oregon Administrative Rules (OARs) with ORS 468A.020.

As a result of revisions made to ORS 468A.020 during the 2007 legislative session, it is possible that agricultural sources, such as confined animal feeding operations (CAFOs) with high emissions, may be subject to the permitting requirements of the CAA in the future if their emissions are above federal permitting thresholds.

Other than the potential requirement for permitting, these rule changes will have minimal impact on agricultural operations in Oregon because no new requirements are directly imposed by this rulemaking. ORS 468A.020 authorizes the Environmental Quality Commission (EQC) to limit emissions from agricultural sources if needed to meet federal CAA requirements, such as National Ambient Air Quality Standards (NAAQS), federal air toxic requirements, or regional haze issues. However, no such requirements are included in this rulemaking and any such requirements would need to be adopted by the EQC in future rulemakings.

This rulemaking will also amend Oregon's State Implementation Plan.

To submit comments or request additional information, please contact Jeffrey Stocum at the Department of Environmental Quality (DEQ), 811 SW 6th Ave., Portland, Oregon, toll free in Oregon at 800-452-4011 or 503-229-5506, or at or at Stocum.jeffrey@deq.state.or.us, or by fax 503-229-5675, or visit DEQ's website: <http://www.deq.state.or.us/news/publicnotices/PN.asp>

Rules Coordinator: Larry McAllister

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

Telephone: (503) 229-6412

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Rule Caption: Amend Plant Site Emission Applicability Rule.

Date: 5-22-08 **Time:** 6 p.m. **Location:** DEQ HQ, 10th Flr. 811 Sixth Ave. Portland, OR

Hearing Officer: Andrea Curtis

Stat. Auth.: ORS 468.020, 468A.025, 468A.035 & 468A.040

Stats. Implemented: ORS 468.020, 468A.025, 468A.035 & 468A.040

Proposed Amendments: 340-200-0040, 340-222-0020

Last Date for Comment: 5-29-08, 5 p.m.

Summary: DEQ is proposing to amend the applicability rule for Plant Site Emission Limits (PSELs). The PSEL Rule sets limits on emissions of specified criteria air pollutants. The primary purpose of establishing a PSEL is to assure compliance with ambient air quality standards. A cross-reference error in the rule added two lists of chemical substances, some of which are not air pollutants, to the substances regulated by the PSEL rule. The proposed rule revisions will clarify the PSEL rule by exempting substances regulated by the Accidental Release Prevention Rule and Early Reduction High Risk Pollutant rules. The rule change would be consistent with DEQ's historical interpretation and implementation of the PSEL program.

The Accidental Release Prevention Rule and Early Reduction High Risk Pollutant programs are not implemented through the Plant Site Emission Limit Rule and do not depend on that rule for implementation. Furthermore, the PSEL rule does not reduce the amount of these substances that may be emitted from a facility. Therefore, exempting these substances from the PSEL rule will not affect the stringency of Oregon's air quality permitting programs.

These amendments, if adopted, will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP), which is a requirement of the Clean Air Act.

To submit comments or request additional information, please contact Gregg Dahmen at the Department of Environmental Quality (DEQ), 811 SW Sixth Avenue, Portland, OR 97204-1390, call toll free in Oregon at 800-452-4011, or (503) 229-5108, or e-mail to dahmen.gregg@deq.state.or.us, or by fax (503) 229-5675, or visit DEQ's website <http://www.deq.state.or.us/news/publicnotices/PN.asp>

Rules Coordinator: Larry McAllister

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

Telephone: (503) 229-6412

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Department of Fish and Wildlife
Chapter 635

Rule Caption: 2009 annual changes to game mammal hunting regulations, plus 2008 controlled hunt game tag numbers.

Date: 6-6-08 **Time:** 8 a.m. **Location:** 3406 Cherry Ave NE Salem, OR

Hearing Officer: Fish & Wildlife Commission

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

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

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

Last Date for Comment: 6-6-08

Summary: Establish 2008 controlled hunt tag numbers and/or season regulations for the hunting of pronghorn antelope, bighorn sheep, Rocky Mountain goat, deer and elk.

Propose 2009 hunting regulations for game mammals, including season dates, bag limits, open areas, location of cooperative travel management areas, and controlled hunting regulations. Propose quo-

NOTICES OF PROPOSED RULEMAKING

tas for 2009 cougar season and spring bear limited, first-come first-serve and controlled hunt tag numbers for 2009. These proposals will be presented in principal to the Oregon Fish and Wildlife Commission in June 2008 and again for adoption in October 2008.

Rules Coordinator: Casaria Tuttle

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

Telephone: (503) 947-6033

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**Department of Human Services,
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."

Date:	Time:	Location:
5-21-08	10-11:30 a.m.	DHS Bldg., Rm. 137A 500 Summer St. NE Salem, OR

Hearing Officer: Richard Luthe

Stat. Auth.: ORS 409.010, 409.050 & 443.450

Stats. Implemented: ORS 443.400 - 443.460 & 443.991(2)

Proposed Amendments: Rules in 309-035

Last Date for Comment: 5-30-08, 5 p.m.

Summary: The Department of Human Services, Addictions & Mental Health Division, is proposing to amend rules in OAR 309-035 "Residential Care Facilities for Mentally or Emotionally Disturbed Persons" rules to provide that the Division can operate "Secure Residential Treatment Facilities."

Rules Coordinator: Richard Luthe

Address: 500 Summer St. NE E86 Salem, OR 97301-1118

Telephone: (503) 947-1186

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

Rule Caption: Reporting and Investigation of Child Abuse and Neglect in Children's Care Program.

Date:	Time:	Location:
5-28-08	1:30-2:30 p.m.	Human Services Bldg. Rm. 137D 500 Summer St. NE Salem, OR 97301

Hearing Officer: Jennifer Bittel

Stat. Auth.: ORS 418.005, 418.189 & 409.050

Other Auth.: Federal Child Abuse Prevention & Treatment Act (CAPTA), P.L. 93-247 (1974, & as amended 1978, 1984, 1988, 1992, 1996, 2003)

Stats. Implemented: ORS 419B.005-419B.050, 418.015, 418.185, 418.205-327, 419B.328, 418.702 & 418.747

Proposed Adoptions: 407-045-0900, 407-045-0910, 407-045-0920, 407-045-0950, 407-045-0960

Proposed Amendments: 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, 407-045-0930, 407-045-0940, 407-045-0970, 407-045-0980

Proposed Repeals: 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)

Last Date for Comment: 5-29-08, 5 p.m.

Summary: 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 permanent adoption of these rules replaces the temporary rules that became effective on December 3, 2007.

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

For hardcopy requests, call: (503) 947-5250.

Rules Coordinator: Jennifer Bittel

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

Telephone: (503) 947-5250

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

Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
5-22-08	1:30 p.m.	500 Summer St. NE, Rm. 257 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 & 419B.192

Proposed Amendments: 413-070-0600, 413-070-0620, 413-070-0625, 413-070-0640

Last Date for Comment: 5-23-08, 12 p.m.

Summary: OAR 413-070-0600, 413-070-0620, 413-070-0625, and 413-070-0640 are about the requirements for assessing the child's needs when the Department places the child in substitute care to assure the child's safety. These rules are being amended to implement SB 414 (2007) by incorporating the Department's responsibility to make diligent efforts to place siblings together when substitute care is required to manage child safety. These rules are also being amended to make permanent temporary rule changes from January 1, 2008. These rules are also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

Rules Coordinator: Annette Tesch

Address: Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301

Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
5-22-08	1:30 p.m.	500 Summer St. NE, Rm. 257 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005

Other Auth.: SB 414 (2007 OL Ch. 806)

Stats. Implemented: ORS 418.005, 419B.337, 419B.440 & 419B.449

Proposed Amendments: 413-070-0800, 413-070-0810, 413-070-0830, 413-070-0855, 413-070-0860, 413-070-0870, 413-070-0880

Last Date for Comment: 5-23-08, 12 p.m.

Summary: OAR 413-070-0800, 413-070-0810, 413-070-0830, 413-070-0855, 413-070-0860, 413-070-0870, and 413-070-0880 about the Department's responsibilities in arranging frequent contact between a child or young adult and his or her parents, legal guardians and siblings are being amended to make permanent temporary rules amended January 1, 2008. These rules are also being amended to incorporate the Department's responsibility to document and track a child's and young adult's visits with his or her parents and siblings when the child is in substitute care. These rules are also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

NOTICES OF PROPOSED RULEMAKING

Rules Coordinator: Annette Tesch
Address: Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301
Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.
Date: 5-22-08 **Time:** 2:30 p.m. **Location:** 500 Summer St. NE, Rm. 257 Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 418.625 & 418.470
Proposed Amendments: 413-090-0010
Last Date for Comment: 5-23-08, 12 p.m.

Summary: OAR 413-090-0010 is being amended to implement the provisions of SB 282, 2007 Or. Laws Ch. 801 by adding relative caregivers to the group of people who may receive a foster care reimbursement, to make permanent a temporary rule amended January 1, 2008, and to implement a cost of living increase to family foster care and relative care rates that the legislature approved. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

Rules Coordinator: Annette Tesch
Address: Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301
Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.
Date: 5-22-08 **Time:** 2:30 p.m. **Location:** 500 Summer St. NE, Rm. 257 Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 418.625, 418.470
Proposed Amendments: 413-100-0040
Last Date for Comment: 5-23-08, 12 p.m.

Summary: OAR 413-100-0040 is being repealed to implement ORS 418.625(3) as amended by SB 282, 2007 Or. Laws Ch 801 which changed the definition of foster home to include relative caregivers. This change requires the Department to eliminate language that states a relative caregiver does not receive a foster care reimbursement if the child they are caretaking for is not Title IV-E eligible. This rule has been suspended since January 1, 2008.

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

Rules Coordinator: Annette Tesch
Address: Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301
Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.
Date: 5-22-08 **Time:** 1:30 p.m. **Location:** 500 Summer St. NE, Rm. 257 Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 409.050 & 418.005
Other Auth.: Individuals with Disabilities Education Act, 20 USC Section 1400 et seq., Family Educational Rights & Privacy Act 20 USC Section 1232g
Stats. Implemented: ORS 326.575, 409.050, 418.005, 419B.192, 419B.220 & 419B.343
Proposed Adoptions: 413-100-0900, 413-100-0905, 413-100-0910, 413-100-0915, 413-100-0920, 413-100-0925, 413-100-0930, 413-100-0935, 413-100-0940

Last Date for Comment: 5-23-08, 12 p.m.
Summary: OAR 413-100-0900, 413-100-0905, 413-100-0910, 413-100-0915, 413-100-0920, 413-100-0925, 413-100-0930, 413-100-0935, and 413-100-0940 are being adopted to make permanent temporary rules adopted January 1, 2008, and to describe the activities required to assure that regular education, special education, pre-school, and post-secondary education services are provided to a child or young adult for whom the Child Welfare Program of the Department is legally responsible. These rules include policies about school placement, transportation, GED, Charter Schools, private school, international study, home schooling, consent for schooling, paying for education expenses, early education, and post-secondary education. These rules also need to be adopted to incorporate state legislative changes in the 2005 and 2007 sessions from HB 3075 (2005) and SB 414 (2007) Or. Laws Ch. 806 (2007) and the reauthorization of federal legislation. These rules are being adopted to replace current Department Policy I-E.8, "Educational Services" which was not adopted through the rulemaking process.

Rules Coordinator: Annette Tesch
Address: Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301
Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.
Date: 5-22-08 **Time:** 1:30 p.m. **Location:** 500 Summer St. NE, Rm. 257 Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 418.005 & 418.640
Stats. Implemented: ORS 418.005 & 418.635
Proposed Amendments: 413-200-0210, 413-200-0220
Last Date for Comment: 5-23-08, 12 p.m.

Summary: OAR 413-200-0210 about family group homes serving children and young adults in Child Welfare custody is being amended to make permanent a temporary rule amended January 1, 2008, add cross-references to other rules and laws, and follow standard formatting. This amendment adds a reference to Child Welfare Policy II-B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents and Pre-Adoptive Parents", OAR 413-200-0270 to 413-200-0296.

OAR 413-200-0220 about requirements for family group homes is being amended to make permanent a temporary rule amended January 1, 2008 to correctly state the Department's policy about caregiver to child ratios in homes certified by the Department. This rule is being corrected to match the four-to-one caregiver to child ratio in OAR 413-200-0348. OAR 413-200-0220 is also being amended to correct the definition of one term to match its usage in the family group home rules. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

Rules Coordinator: Annette Tesch
Address: Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301
Telephone: (503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.
Date: 5-22-08 **Time:** 1:30 p.m. **Location:** 500 Summer St. NE, Rm. 257 Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.015, 419B.015 & 419B.020
Proposed Adoptions: 413-200-0404, 413-200-0409, 413-200-0414, 413-200-0419, 413-200-0424
Last Date for Comment: 5-23-08, 12 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: OAR 413-200-0404, 413-200-0409, 413-200-0414, 413-200-0419, and 413-200-0424 about the responsibilities of screeners in Child Protective Services, the child's assigned caseworker, and certifiers in the Child Welfare program during the screening and assessment of a report of abuse or neglect in the home of a certified foster parent or relative caregiver approved by the Department are being adopted. These rules are being adopted to make permanent temporary rules adopted January 1, 2008 and to implement SB 412 (2007) which amended ORS 419B.015. These rules are being adopted to replace the Department's Child Welfare Policy I-B.2.2.3, "Assessment of Abuse Allegations in Family Foster Care, Family Group Homes and Family Shelter Homes", which was not adopted through the public rulemaking process.

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

Rules Coordinator: Annette Tesch

Address: Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301

Telephone: (503) 945-6067

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

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

Date:	Time:	Location:
5-23-08	10 a.m.	500 Summer St. NE, Rm. 254 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.598, 411.600, 411.700, 411.710, 411.816, 412.006, 412.009, 412.014, 412.049, 414.042, 417.345 & 417.346

Other Auth.: 42 U.S.C. § 1396a and 1396r-5; Section 1634(b) and 1902(a)(10)(A)(ii)(XIII) of the Social Security Act; The Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4, Section 6012 (Feb. 8, 2006); Public Law 105-285 Sec. 415; Section 525 of Title V of Division G of Public Law 110-161 "The Consolidated Appropriations Act, 2008" and Section 1244 of Public Law 110-181, National Defense Authorization Act for Fiscal Year 2008; 20 CFR 404.1051; 20 CFR 416.1110; 20 CFR 416.1160; 42 CFR 435.137 and 435.608; 45 CFR 400.23 and 400.54; Oregon Medicaid/State Children's Health Insurance Program (CHIP) Health Insurance Flexibility and Accountability (HIFA) Section 1115 Demonstration; Medically Involved Children's 1915(c) Waiver; SSA POMS SI 00820.005, SI 01130.430, SI 01320.500, and SI 0130.115; State Medicaid Manual, Chapter III, Section 3258.9B; Senior Farmer's Market Nutrition Program, Fiscal Year 2007 State Plan; State Plan Under Title XIX of the Social Security Act Medical Assistance Program; State Plan Transmittal Number 07-012

Stats. Implemented: ORS 183.417, 409.050, 410.070, 411.060, 411.070, 411.095, 411.117, 411.598, 411.600, 411.700, 411.708, 411.710, 411.816, 412.006, 412.009, 412.014, 412.049, 412.069, 414.025, 414.042, 417.345, 417.346, 417.348 & 1999 OL Ch. 859, 2003 OL Ch. 710 & 735

Proposed Adoptions: 461-135-1125, 461-145-0261, 461-160-0551

Proposed Amendments: 461-001-0000, 461-025-0310, 461-025-0311, 461-025-0375, 461-110-0410, 461-110-0530, 461-115-0030, 461-115-0050, 461-115-0651, 461-120-0120, 461-120-0125, 461-120-0330, 461-120-0510, 461-130-0325, 461-135-0010, 461-135-0082, 461-135-0400, 461-135-0570, 461-135-0750, 461-135-0780, 461-135-0900, 461-135-1102, 461-135-1110, 461-135-1175, 461-140-0010, 461-140-0040, 461-140-0220, 461-140-0242, 461-145-0020, 461-145-0022, 461-145-0080, 461-145-0090, 461-145-0310, 461-145-0490, 461-145-0510, 461-145-0560, 461-145-0582, 461-155-0180, 461-155-0235, 461-155-0250, 461-155-0270, 461-155-

0500, 461-160-0010, 461-160-0550, 461-160-0620, 461-160-0800, 461-165-0190, 461-175-0200, 461-180-0040

Proposed Repeals: 461-135-0811, 461-155-0650, 461-155-0690, 461-160-0810, 461-160-0820, 461-160-0850

Last Date for Comment: 5-29-08, 5 p.m.

Summary: OAR 461-001-0000 about the defined terms used in OAR Chapter 461 in the Department's public assistance, medical and food stamp programs is being amended to state how the term "initial month" is used in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs when calculating a disqualifying transfer of assets in OAR 461-140-0296.

OAR 461-025-0310 about hearing requests in the Department's public assistance, medical and food stamp programs and 461-025-0311 about continuing benefits pending a hearing in the Department's public assistance, medical and food stamp programs are being amended to comply with federal regulations by restating the Department's policy regarding when clients in the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) are entitled to a hearing and entitled to continuing benefits pending a hearing.

OAR 461-025-0375 about the timeliness and effective date of final orders in contested cases involving the Department's public assistance, medical and food stamp programs is being amended to restate the Department's policy regarding the timeliness and effective dates of final orders. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-110-0410 about filing groups in the Department's Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM) and Qualified Medicare Beneficiaries, (QMB)

programs is being amended to comply with federal Medicaid guidelines in the Social Security Administration's Program Operation Manual System SI 00501.010 by restating the Department's policy on who must be included in the filing group in the OSIP, OSIPM and QMB programs. Previously in the OSIP and OSIPM programs for applicants under the age of 18 in a standard living arrangement the filing group consisted of each parent in the household group, and for applicants age 18 and older the filing group consisted of the applicant and the spouse of the applicant. In the QMB program, in a standard and nonstandard living arrangement, the filing group consisted of the applicant and the spouse of the applicant, and children (under age 21) if the applicant chose to include them in the filing group, and for applicants under age 21 who were not assumed eligible, the filing group included the parents of the applicants. The rule is being amended to change the filing group composition by removing the reference to the age of the applicant in the OSIP and OSIPM programs and replacing it with the term "child" as defined in OAR 461-001-0000, and by removing the reference to the age of the child in the QMB program. The definition of a child (as per 461-001-0000) includes applicants under the age of 18, or under the age of 22 and attending full time secondary, post secondary or vocational-technical training designed to prepare the applicant for employment.

OAR 461-110-0530 about the financial group in the Department's public assistance, medical and food stamp programs is being amended to restate the Department's policy regarding financial group composition in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) for non-standard living situations when there is a community spouse. The rule change clarifies that the community spouse is not included in any other eligibility group.

OAR 461-115-0030 about the date of request in the Department's public assistance, medical and food stamp programs is being amended to restate Department policy regarding the date of request for the Oregon Health Plan (OHP) medical programs. This rule is being amended by removing the statement that a new date of request is

NOTICES OF PROPOSED RULEMAKING

established if the completed OHP application is received by the department more than 30 days after the original date of request.

OAR 461-115-0050 about when an application must be filed in the Department's public assistance, medical and food stamp programs is being amended to make permanent a temporary rule amended January 28, 2008 and to restate the Department's requirements related to applying for the Oregon Health Plan standard (OHP-OPU). This rule is being amended to require completion of an application in order to be considered for the OHP-OPU medical program. Currently OHP Standard program applicants whose children or spouse are already receiving medical benefits from the Department of Human Services are not required to complete a new application when requesting OHP Standard benefits for themselves. The rule is being amended to require completion of the "OHP Standard Reservation List Application - OHP Application" (OHP 7210R) in order to be considered for OHP Standard. The OHP 7210R will be mailed to individuals on the OHP Standard Reservation List. Depending upon their placement on the list and the funds available for new enrollees, individuals with a reservation may be mailed an OHP 7210R. Requesters who are mailed the OHP 7210R may be considered for the OHP Standard program.

OAR 461-115-0651 about required verification in the food stamp program is being amended to correctly state the Department's policy on required verification. This amendment removes the requirement to verify Oregon residency, and requires all countable income to be verified for reported changes for cases in the change reporting system and at recertification for all food stamp cases. The amendment also corrects the policy for cases using the simplified reporting system by specifying that food stamp cases in which every member is elderly or disabled and has no earned income are not required to verify income in the sixth month of the certification period.

OAR 461-120-0120 about the alien status requirements in the (REF) Refugee Cash Assistance and (REFM) Refugee Medical Assistance programs; OAR 461-120-0125 about the alien status requirements in the public assistance, medical and food stamp programs other than Refugee Assistance (REF) and Refugee Assistance Medical (REFM); OAR 461-135-0082 about eligibility for Refugee Case Services, and 461-135-0900 about specific requirements for the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs are being amended to make permanent temporary rules amended January 30, and February 22, 2008; to comply with Section 1244 of Public Law 110-181, National Defense Authorization Act for Fiscal Year 2008 by changing the eligibility period for Iraqi and Afghan special immigrants for REF, REFM, Employment- or Education-Related Day Care (ERDC), Temporary Aid for Needy Families (TANF), Medical benefits, and food stamp benefits and services. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-120-0330 about the requirement to pursue asset in the Department's public assistance and medical programs is being amended to comply with 42 CFR 608 by adding an exception to the requirement to pursue assets when the client can show good cause.

OAR 461-120-0510 about the age requirements for clients to receive benefits in the Department's public assistance, medical and food stamp programs is being amended to restate the Department's age requirements to receive benefits in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs and make the Department's rule consistent with agency practice by stating that clients under the age of 18 can receive OSIPM-AD even if they do not have SSI. This rule is also being amended to make the Department's rule consistent with agency practice by removing references to Oregon Food Stamp Employment Transition Program, (OFSET). This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-130-0325 about participation requirements in the Food Stamp, Refugee Assistance (REF) and Temporary Aid to Needy Families (TANF) programs is being amended to clarify that in the Food Stamp program, the job quit provisions do not apply when an employer reduces work hours.

OAR 461-135-0010 about assumed eligibility for medical programs is being amended to restate the Department's policy regarding individuals who are assumed eligible for the Department's Oregon Supplemental Income Program Medical (OSIPM) program. This rule is being amended to provide that individuals who receive SSI or are deemed eligible for SSI under Section 1619(a) or (b) of the Social Security Act are not assumed eligible for Medicaid if the individual is married and the couple's combined resources cause the client's countable resources to exceed the resource limit using the calculation in OAR 461-160-0580. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-135-0400 about specific requirements in the Employment- or Education-Related Day Care (ERDC) program and OAR 461-165-0190 about payments for child care in the ERDC, Job Opportunity and Basic Skills (JOBS), OFSET and Temporary Aid for Needy Families (TANF) programs are being amended to make the Department's rules consistent with agency practice by removing reference to Oregon Food Stamp Employment Transition Program (OFSET) Child Care and OAR 461-001-0020 because OFSET Child Care funding was made obsolete in October of 2005.

OAR 461-135-0570 about the eligibility of students in the Food Stamp program is being amended to restate the Department's policy on eligibility for higher education students who live in a dormitory or other living situation with meal plans by treating all students who have meal plans similarly.

OAR 461-135-0750 about the eligibility for individuals in long-term care or waived services in the Oregon Supplemental Income Program (OSIPM) is being amended to clarify current policy regarding eligibility for OSIPM for individuals receiving long-term care or waived services. Additionally, the rule is being amended to add OSIPM eligibility for certain children who meet the service eligibility standards for the Medically Involved Children's Waiver, and certain individuals residing in a community-based setting covered by the Independent Choices Program. This rule is being amended to implement the requirements of HB 2406 (2007) and the Medically Involved Children's Waiver. This rule is also being amended to make permanent a temporary rule amended April 7, 2008. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-135-0780 about eligibility for Oregon Supplemental Income Program Medical (OSIPM) program for clients who are eligible under the Pickle Amendment is being amended to clarify and correct the eligibility calculation. This amendment to this rule provides that after the client's current social security benefit amount is multiplied by the decimal in the rule, the result must be rounded down to the next whole dollar amount. This amendment to this rule also provides that adjusted earned income (after earned income deductions) and not countable earned income (gross before deductions) is used in the calculation. This amendment to this rule also provides that the income standard to be used is the Supplemental Security Income (SSI) standard, rather than the OSIP standard. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-135-0811 regarding Oregon Supplemental Income Program Medical (OSIPM, aid to the elderly and people with disabilities) for disabled widows/widowers who lost their SSI because the actuarial reduction for people under the age of 60 increased their widow/widower's benefits and resulted in terminating the SSI, is being repealed.

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OAR 461-135-1102 about the effective dates for the OHP-OPU (usually referred to as OHP Standard) is being amended to make permanent a temporary rule amended January 28, 2008 and to state that the program is open to new applicants who qualify under OAR 461-135-1125 (the reservation list process). OHP Standard has been closed to some new enrollees since June 30, 2004.

OAR 461-135-1110 about eligible and ineligible students in the OHP-OPU program (Oregon Health Plan coverage for adults who qualify under the 100 percent income standard) is being amended to update the expected contribution level that makes some students ineligible for OHP. OHP Standard eligibility for full time higher education students includes a provision that the OHP Standard applicant must be eligible for a Pell Grant or have a Pell Grant Expected Family Contribution (EFC) less than the federal maximum established by the U.S. Department of Education. This rule is being amended to show the federal maximum for the 2008-2009 school year. The EFC maximum amount for an OHP Standard applicant must be less than \$4,042 for the 2008-2009 school year, a decrease from the 2007-2008 school year maximum of \$4,111.

OAR 461-135-1125 about the reservation list and eligibility for the OPU category of the Oregon Health plan (OHP-OPU or OHP Standard) is being adopted in order to make permanent a temporary rule adopted January 28, 2008 and later amended, and to reopen OHP-OPU to a limited number of new applicants, by specifying the Department's procedures for placing individuals on and selecting individuals from a reservation list. A reservation list is a list of individuals who may be considered for the OHP-OPU program as a new applicant at such times as the Department determines that new applicants may be added to the program. The list would be used to manage enrollment of new applicants into the program within the limits of program authority and funding.

OAR 461-135-1175 about the Department's Senior Farm Direct Nutrition Program (SFDNP) is being amended to comply with clarifications received from the United States Department of Agriculture, Food and Nutrition Service by restating the eligibility criteria for SFDNP. OAR 461-135-1175 is being amended to provide that in order to be eligible for SFDNP, the Department must receive the client's letter of interest no later than September 30 of any given year.

OAR 461-140-0010 about the availability of assets in the Department's public assistance, medical and food stamp programs is being amended to restate the Department's policy regarding when an asset may be excluded by specifying that an excluded asset remains excluded only while being used in the manner consistent with the rule that provided the exclusion.

OAR 461-140-0040 about the availability of income in the Department's public assistance, medical and food stamp programs is being amended to resolve an inconsistency in the Department's rule and make the Department's rule consistent with the Department's policy manual and practice by adding QMB to this list of programs where moneys withheld from or returned to the source of the income to repay an overpayment from that source are countable, even if the client does not receive the income.

OAR 461-140-0220 about determining whether a transfer of an asset is disqualifying in the Department's public assistance, medical and food stamp programs is being amended to restate the Department's policy on which transfers are disqualifying by adding a cross-reference to OAR 461-145-0390 about personal belongings. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-140-0242 about disqualifying transfers of assets in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program (OSIP), and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to change the definition of a child for the purposes of determining whether a transfer of assets is disqualifying in the GA, GAM, OSIP and OSIPM programs. Previously, the definition included a step child. The rule is being amended so that the definition only

includes natural or adoptive children under age 21, or children of any age who have been determined to meet the Department's blindness or disability criteria. This rule is also being amended to clarify current policy regarding transfers to children who meet Social Security Administration criteria for blindness or disability and to clarify that the definition of "child" in OAR 461-001-0000 does not apply to this rule.

OAR 461-145-0020 and OAR 461-145-0022 provide for the treatment of annuities in all Department programs. The rules are being amended for the Oregon Supplemental Income Program (OSIP — assistance to the elderly and persons with disabilities), OSIP-Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) programs, to state that when monthly payments from annuities are counted as unearned income, the income is attributed to the payee. These rules are also being amended to state that qualifying annuities must be actuarially sound by paying out over a period of time within three months of the actuarial life expectancy of the annuitant. The current version of these rules attributes the unearned income to the annuitant, and states that the annuity must pay out "within" the actuarial life expectancy of the annuitant. In addition, OAR 461-145-0022 is being amended to restate the Department's policy on how to treat annuities purchased before January 1, 2006.

OAR 461-145-0080 is being amended to clarify how child support and cash medical support is counted for on-going eligibility and benefit determination for TANF clients in the State Family Pre-SSI/SSDI Program (SFPSS) and for TANF clients for whom deprivation is based on the unemployment or underemployment of both parents.

OAR 461-145-0090 about the consideration of income from disability insurance benefits in the Department's public assistance, medical and food stamp programs is being amended to align the policy with federal law as provided in 20 CFR 416.1110, 20 CFR 404.1051 and POMS SI 00820.005 by stating how disability payments are treated in the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiaries, (QMB) programs. This rule is being amended to state that for OSIP, OSIPM, and QMB, disability insurance payments can be counted as earned income if the income is received within six months of stopping work and the employer has contributed to the insurance.

OAR 461-145-0261 about the treatment of Individual Development Accounts in the Department's public assistance, medical and food stamp programs is being adopted to state the Department's policy on the treatment of Individual Development Accounts.

OAR 461-145-0310 is about the treatment of life estates in real property in the Department's public assistance, medical and food stamp programs. This rule is being amended to clarify the Department's policy and make the Department's policy consistent with the Department's practice regarding the treatment of life estates in the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) programs. OAR 461-145-0310 is being amended to clarify the treatment of life estates that are not disqualifying in the OSIP, OSIPM, and QMB programs. The rule is also being amended to specify the circumstances under which the value of a life estate may be considered unavailable. For the QMB program only, the rule is being amended to reflect current policy regarding the transfer of assets for less than fair market value. QMB is being removed from the programs affected by transfers for less than fair market value.

OARs 461-145-0490 about the treatment of Social Security benefits in the Department's public assistance, medical and food stamp programs and OAR 461-145-0510 about the treatment of SSI in the Department's public assistance, medical and food stamp programs are being amended to make the Department's policy consistent with its practice and consistent with federal policy by adding Qualified Medicare Beneficiaries (QMB) to the programs for which SSI and SSB lump-sum payments are not counted for a nine-month time-

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frame. QMB was inadvertently left out of the section of rule that directed the exclusion.

OAR 461-145-0560 is about the treatment reimbursements from the Federal Uniform Relocation Assistance Act and the Real Property Acquisition Policies Act of 1970 in the Department's public assistance, medical and food stamp programs. This rule is being amended to restate the Department's policy regarding the treatment reimbursements from the Federal Uniform Relocation Assistance Act and the Real Property Acquisition Policies Act of 1970. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-145-0582 is about the treatment of victims' assistance payments in the Department's public assistance, medical and food stamp programs. This rule is being amended to restate the Department's policy for treatment of certain victim assistance programs in the General Assistance (GA) and General Assistance Medical (GAM) programs. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-155-0180 is about the poverty related income standards for the Department's programs that use a monthly income standard based on the federal poverty level and OAR 461-155-0235 is about the premium standards for the Oregon Health Plan standard (OHP-OPU). These rules are being amended to reflect the annual increase in the federal poverty guidelines and to make permanent temporary rules amended January 24, 2008. The Department converts the annual poverty guidelines published in the Federal Register to a monthly, rounded amount and uses the result to determine the new income limits and amount of premium billed for each OHP Standard client who is required to pay a monthly premium. Some OHP Standard clients are exempt from the premium requirement.

OAR 461-155-0250 about the income and payment standards in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to provide correct figures related to income limits for the Employed Persons with Disabilities (EPD) program as a result of new Federal Poverty Level figures for 2008.

OAR 461-155-0270 about the maintenance standard for room and board and personal needs for the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) program is being amended to restate the Department's policy regarding the maintenance standard and make the Department's policy consistent with agency practice by adding the room and board standard and personal needs standard for children under the age 18. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-155-0500 is the overview rule about special needs payments in the General Assistance (GA), General Assistance Medical (GAM), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), Refugee Assistance (REF), Refugee Assistance Medical (REFM), and Temporary Aid for Needy Families (TANF) programs. This rule is being amended to delete references to the special needs covered by the repealed rules (OAR 461-155-0650 and OAR 461-155-0690). This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-155-0650 and OAR 461-155-0690 are about the Oregon Supplemental Income Program (OSIP, aid to the elderly and people with disabilities), OSIP-Medical (OSIPM), General Assistance (currently closed), and GA-Medical (currently closed) programs, and provide for special needs payments under certain circumstances. OAR 461-155-0650 provides for payments when a client purchases meals and shelter when the provider offers no other services. OAR 461-155-0690 provides for payments when the client is looking for

work or has a bona fide job interview. Both of these rules are being repealed because there are no longer any OSIP, OSIPM, GA, or GAM clients who meet the circumstances and have these needs, and who are receiving payments under these rules.

OAR 461-160-0010 about how resources are used to determine financial eligibility in the Department's public assistance, medical and food stamp programs is being amended to align it with federal policy and state how to treat resources when a child is applying for benefits by adding provisions that state which assets of an adult may be deemed available to children. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

OAR 461-160-0550 about income deductions in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) for clients who do not receive SSI, do not receive Title XIX waived services and who live in the community is being amended to specify that this rule applies when there are no children in the household and to clarify deductions and deeming for adults and children in the OSIP and OSIPM programs.

OAR 461-160-0551 about income deductions in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) for clients who do not receive SSI, do not receive Title XIX waived services and who live in the community is being adopted to specify that this rule applies when there are children in the household and to clarify deductions and deeming for adults and children in the OSIP and OSIPM programs.

OAR 461-160-0620 about income deductions and client liability for long-term care and waived services is being amended to make a required, annual adjustment to the income protection requirements for Oregon Supplemental Income Program Medical (OSIPM) program, offered to married couples when one spouse remains at home and the other receives long-term care or community-based waived services. The amount of protection is based on the federal poverty guidelines for a two-person household. This increase will apply to the minimum income allowance (150 percent of the federal poverty guidelines for a couple) and the monthly housing allowance amount (30 percent of the minimum income allowance). This rule is also being amended to correct the term "gross income" to "countable income", because countable income is the term used and defined in Department rules.

OAR 461-160-0800 is about determining the participant fee in the Oregon Supplemental Income Program Employed Persons with Disabilities program (OSIP-EPD) and Oregon Supplemental Income Program Medical Employed Persons with Disabilities program (OSIPM-EPD). OAR 461-160-0810 is about determining cost share and room and board payments for OSIPM-EPD clients residing in a community-based care facility. OAR 461-160-0820 is about determining cost share for OSIPM-EPD clients residing in a nursing facility. OAR 461-160-0850 is about determining the post-eligibility premium for clients in the OSIP-EPD and OSIPM-EPD programs. OAR 461-160-0800 is being amended and OAR 461-160-0810, 461-160-0820, and 461-160-0850 are being repealed to eliminate the current cost share/premium calculation for the OSIP-EPD and OSIPM-EPD programs and create a four-tiered participant fee structure based on the OSIP-EPD and OSIPM-EPD participant's combined earned and unearned income.

OAR 461-175-0200 about notice requirements in the Department's public assistance, medical and food stamp programs is being amended to include notice requirements to support the Multnomah County and Deschutes County Pre-natal CAWEM Expansion Pilot Program. Citizen/Alien Waived Emergent Medical (CAWEM) benefits are limited to emergent medical needs. The Pre-natal CAWEM Expansion Pilot Program provides pre-natal benefits under an amendment to Oregon's State Children's Health Insurance Program (SCHIP) to pregnant women who would not otherwise receive pre-natal medical benefits under CAWEM. Adding the approval notice situation for pilot participants will allow the Department to notify the pregnant CAWEM Medicaid recipient that the pre-natal SCHIP

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benefits provided under the pilot will end when the pregnancy ends and that she will be eligible for CAWEM Medicaid benefits after the pregnancy ends.

OAR 461-180-0040 about the effective date for changes in special and service needs is being amended to clarify the Department's policy and make the Department's policy consistent with the Department's practice regarding effective dates for services and special needs.

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

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

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

Rule Caption: Prenatal coverage for CAWEM women pilot in Multnomah and Deschutes Counties under SCHIP program.

Date:	Time:	Location:
5-16-08	10:30 a.m.	HSB Bldg. Rm 137C 500 Summer St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 408.010, 409.050, 409.110 & 414.065

Stats. Implemented: ORS 414.065

Proposed Adoptions: 410-120-0030

Proposed Repeals: 410-120-0030(T)

Last Date for Comment: 5-30-08

Summary: The General Rules Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to clients. Having temporarily adopted 410-120-0030, with this Notice, DMAP will permanently adopt the rule and Suspend 410-120-0030 (T) 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. Early prenatal care positively influences healthy outcomes for both mother and child to mitigate adverse outcomes of high-risk pregnancies and is an accepted standard of care. Lack of access to prenatal care may result in increased risk at birth and in infancy for children, and may result in increased costs of medical care to the state. This pilot will be operated under an amendment to Oregon's State Children's Health Insurance Program (SCHIP) plan. Oregon anticipates receiving federal approval for the pilot project, effective April 1, 2008. Temporary rulemaking permits the provision of prenatal care and labor and delivery services under the pilot project in accordance with that date.

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

Rule Caption: July 2008 — Telephone call reimbursement (coverage may be limited).

Date:	Time:	Location:
5-16-08	10:30 a.m.	Human Services Bldg. Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 409.010, 409.050, 409.065 & 409.110

Stats. Implemented: ORS 414.025 & 414.065

Proposed Amendments: 410-120-1200

Last Date for Comment: 5-30-08

Summary: The General Rules program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for

services to clients. DMAP will amend 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 may be revised to improve readability and to take care of necessary "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

Rule Caption: July 2008 rule revisions.

Date:	Time:	Location:
5-16-08	10:30 a.m.	Human Services Bldg. Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 409.010, 409.050, 404.110 & 414.065

Stats. Implemented: ORS 414.065

Proposed Adoptions: 410-122-xxxx

Proposed Amendments: 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

Last Date for Comment: 5-30-08

Summary: 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 will adopt a new rule to establish conditions of coverage for Gradient Compression Stockings. DMAP will amend 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 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.

NOTICES OF PROPOSED RULEMAKING

410-122-0400, Pressure Reducing Support Surfaces: Makes codification corrections and clarifies documentation requirements for a completely immobile client requiring Group 1 surface.

410-122-0475, Therapeutic Shoes for Diabetics: Removes deleted codes and adds replacement codes for multiple density inserts.

410-122-0500, 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, Ileostomy, Ureterostomy: Clarifies documentation requirements when a provider bills for a greater quantity of supplies than generally allowed in the 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 on the wheelchair selection for the client. Text will be revised to improve readability and take care of necessary "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: July 2008 revision to clarify text.

Date:	Time:	Location:
5-16-08	10:30 a.m.	Human Services Bldg. Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-123-1000, 410-123-1260, 410-123-1540, 410-123-1670

Last Date for Comment: 5-30-08

Summary: The Dental Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services provided to certain clients. DMAP will amend 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

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: July 2008 rule revisions.

Date:	Time:	Location:
5-16-08	10:30 a.m.	Human Services Bldg. Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 409.010, 409.050, 409.110 & 414.065

Stats. Implemented: ORS 414.010, 414.050, 414.065 & 414.727

Proposed Amendments: 410-125-0000, 410-125-0047, 410-125-0080, 410-125-0141, 410-125-0220, 410-125-0360, 410-125-0400, 410-125-0600, 410-125-0720

Last Date for Comment: 5-30-08

Summary: The Hospital Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP will amend rules as follows: OAR 410-125-000, to reference General Rules OAR 410-120 for client eligibility information; OAR 410-125-0220, 410-125-0360, 410-125-0400, 410-125-0600 and 410-125-0720, to comply with CMA billing form name changes; OAR 410-125-0047, to update CMS code ICD-9 code additions and deletions without intent of coverage changes; OAR 410-125-0080 to update prior authorization of CPT codes as required by the Department; and OAR 410-125-0141 to restore cost of providing direct and indirect medical education to teaching hospitals. Text will be revised to improve readability and take care of necessary "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: July 2008 — Clarify policies and procedures/technical changes due to CPT code updates.

Date:	Time:	Location:
5-16-08	10:30 a.m.	Human Services Bldg. Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 404.110, 409.050 & 414.065

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-130-0000, 410-130-0180, 410-130-0190, 410-130-0200, 410-130-0220, 410-130-0255, 410-130-0610, 410-130-0680

Last Date for Comment: 5-30-08

Summary: The Medical-Surgical Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP will amend 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 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

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: July 2008 revisions to clarify text.

Date:	Time:	Location:
5-16-08	10:30 a.m.	Human Services Bldg. Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-140-0040, 410-140-0050, 410-140-0160, 410-140-0260, 410-140-0320, 410-140-0400

Last Date for Comment: 5-30-08

Summary: The Visual Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services provided to certain clients. DMAP will amend rules to clarify current policies and procedures to ensure these rules are not open

NOTICES OF PROPOSED RULEMAKING

to interpretation by the provider or outside parties and help to 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

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: Technical changes to the October 1, 2005 (-07) Health Services Commission's Prioritized List of Health Services Purposes.

Date:	Time:	Location:
5-16-08	10:30 a.m.	Human Services Bldg., Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Staff

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

Proposed Amendments: 410-141-0520

Last Date for Comment: 5-30-08

Summary: 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 will permanently amend 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.

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: July 2008 rule revisions — correct policies and procedures to comply with Federal requirements.

Date:	Time:	Location:
5-16-08	10:30 a.m.	Human Services Bldg. Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 409.010, 409.050, 409.110 & 414.065

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-141-0260, 410-141-0261, 410-141-0262, 410-141-0263, 410-141-0264, 410-141-0265

Last Date for Comment: 5-30-08

Summary: The Oregon Health Plan (OHP) Managed Care program administrative rules govern Division of Medical Assistance Program's (DMAP) payment for services to clients. Rules listed above will be amended 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

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

Telephone: (503) 945-6927

Rule Caption: July 2008 — Technical and housekeeping changes.

Date:	Time:	Location:
5-16-08	10:30 a.m.	Human Services Bldg. Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 409.050, 404.440 & 414.065

Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42 USC 1396a(bb), 1396d (United States Code 42, Ch. 7, Sub Ch. 19) & Public Law 93-638 Title 25 Sec. 1603

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-146-0200, 410-146-0380, 410-146-0440

Last Date for Comment: 5-30-08

Summary: The American Indian/Alaska Native Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP will amend 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 will be revised to improve readability and take care of necessary "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: Technical changes and housekeeping of current FQHC and RHC rule.

Date:	Time:	Location:
5-16-08	10:30 a.m.	Human Services Bldg. Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 409.010, 409.050, 409.065 & 409.110

Stats. Implemented: ORS 414.025 & 414.065

Proposed Amendments: 410-147-0040, 410-147-0080, 410-147-0125, 410-147-0280, 410-147-0320, 410-147-0340, 410-147-0360, 410-147-0460

Last Date for Comment: 5-30-08

Summary: 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

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: July 2008 — Clarify policies and procedures/update CPT codes/Rx Benefit Manager.

Date:	Time:	Location:
5-16-08	10:30 a.m.	Human Services Bldg. Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 409.050, 404.110 & 414.065

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-148-0060, 410-148-0140

Last Date for Comment: 5-30-08

Summary: The Home Enteral/Parental Nutrition and IV (EPIV) Services program administrative rules govern Division of Medical

NOTICES OF PROPOSED RULEMAKING

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 the 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 "house-keeping" 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

Rule Caption: Clarify Pharmaceutical Services rules, semi-annual update Practitioner Managed Prescription Drug Plan list.

Date:	Time:	Location:
5-16-08	10:30 a.m.	Human Services Bldg. Rm. 137C 500 Summer St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-121-0021, 410-121-0030, 410-121-0032, 410-121-0040, 410-121-0157

Last Date for Comment: 5-30-08

Summary: The Pharmaceutical Services Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP will amend 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 may be revised to improve readability and take care of necessary "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

Department of Human Services, Public Health Division Chapter 333

Rule Caption: Breast and Cervical Cancer Program.

Date:	Time:	Location:
5-23-08	10 a.m.	800 NE Oregon St., Rm. 1B Portland, OR

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.050

Proposed Adoptions: 333-010-0100, 333-010-0105, 333-010-0110, 333-010-0115, 333-010-0120, 333-010-0125, 333-010-0130, 333-010-0135, 333-010-0140, 333-010-0145, 333-010-0150, 333-010-0155, 333-010-0160, 333-010-0165, 333-010-0170, 333-010-0175, 333-010-0180, 333-010-0185, 333-010-0190, 333-010-0195

Last Date for Comment: 5-28-08, 5 p.m.

Summary: The Department of Human Services, Public Health Division is proposing to adopt rules to facilitate administration of the Breast and Cervical Cancer Program.

Rules Coordinator: Brittany Sande

Address: Department of Human Services, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232

Telephone: (971) 673-1291

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

Rule Caption: Payment Limitations in Community-Based Care Services.

Date:	Time:	Location:
5-16-08	2 p.m.	Human Services Bldg. Rm. 137AB 500 Summer St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Proposed Adoptions: 411-027-0005

Proposed Amendments: 411-027-0025, 411-027-0050, 411-027-0075, 411-027-0150

Proposed Repeals: 411-027-0200

Proposed Ren. & Amends: 411-027-0000 to 411-027-0020

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

Summary: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is proposing to update 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

Address: Department of Human Services, Seniors and People with Disabilities Division, 500 Summer St. NE, E-10, Salem, OR 97301
Telephone: (503) 945-6398

Rule Caption: Medically Involved Children's Program.

Date:	Time:	Location:
6-16-08	3 p.m.	Human Services Bldg. Rms. 137AB 500 Summer St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 409.050 & 417.345

Other Auth.: HB 2406 (2007)

Stats. Implemented: ORS 430.215, 427.007 & 417.340 - 417.355
Proposed Adoptions: 411-355-0000, 411-355-0010, 411-355-0020, 411-355-0030, 411-355-0040, 411-355-0050, 411-355-0060, 411-355-0070, 411-355-0080, 411-355-0090, 411-355-0100, 411-355-0110, 411-355-0120

Last Date for Comment: 6-20-08, 5 p.m.

Summary: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is proposing to permanently adopt the temporary rules in OAR chapter 411, division 355 that implemented the Medically Involved Children's Program.

Rules Coordinator: Christina Hartman

Address: Department of Human Services, Seniors and People with Disabilities Division, 500 Summer St. NE, E-10, Salem, OR 97301
Telephone: (503) 945-6398

Department of Justice Chapter 137

Rule Caption: Clarifies requirements for applications for services and time lines and criteria for late hearing requests.

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS 25.020, 107.108 & 180.345
Stats. Implemented: ORS 25.020, 25.080, 25.140, 25.164, 25.381, 107.108, 180.345 & 183.415
Proposed Amendments: 137-055-1060, 137-055-1070, 137-055-2160, 137-055-5110

Last Date for Comment: 6-20-08, 5 p.m.

Summary: OAR 137-055-1060 is being amended to remove the word "enforcement," to remove a reference to a supplemental form and to clarify that the notice described in section (3) will be provided.

OAR 137-055-1070 is being amended to add a clarification that a request for services in an order must be signed. If the request is not signed, an application for services will be sent to a party. The party must sign and return the application for services to continue. The rule is also being amended to clarify that income withholding will be provided without an application if a party requests it pursuant to ORS 25.381(2)(a).

OAR 137-055-2160 is being amended to clarify that a request for hearing must be received within the time allowed by law in order to be considered timely. The rule is also being amended to clarify time lines when parentage tests have been completed and the alleged father has been included as the biological father, changing response times from 14 days to 30 days to request a hearing for support. The rule is also being amended to clarify that if an alleged father has requested parentage testing but fails to appear for the testing, an administrative order is entered for his failure to appear and the party is given 14 additional days to request a hearing for support, the request for hearing on support will not be considered late if received within that time.

OAR 137-055-5110 is being amended to clarify that if a case is closed because a child attending school has not met certain criteria, it may be reopened if the child attending school submits the appropriate paperwork, including a signed application for services, which may be a separate document or included as a statement on the compliance forms.

Rules Coordinator: Vicki Tungate
Address: Department of Justice, Division of Child Support, 494 State St., Suite 300, Salem, OR 97301
Telephone: (503) 986-6086

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**Department of Oregon State Police,
Office of State Fire Marshal
Chapter 837**

Rule Caption: Update NFPA standard reference dates and clarify what a "direct means of egress" is.

Stat. Auth.: ORS 476
Stats. Implemented: ORS 476.030(C)
Proposed Amendments: 837-041-0050
Last Date for Comment: 5-21-08

Summary: The rules changes outdated reference dates of the Oregon Structural Specialty Code and NFPA standards. It also provides clarification of what an "approved direct means of egress" is in 837-041-0050(2)(c).

The allowance for windows to be acceptable has been removed since emergency escape windows are not sufficient exiting for structures other than single family dwellings.

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 Oregon State Police,
State Athletic Commission
Chapter 230**

Rule Caption: Permanent Mixed Martial Arts Rules: Amending Definitions, Licensing and Application Rules for all Commission Sports.

Date: 5-23-08
Time: 1:30 p.m.
Location: 3400 State St., Suite G-750
Salem, OR 97301

Hearing Officer: Brad Darcy
Stat. Auth.: ORS 463.113, 463.165 & 463.185
Stats. Implemented: ORS 463.015, 463.025, 463.035, 463.037, 463.113, 463.149, 463.165, 163.185, 463.200, 163.500 & 463.185

Proposed Adoptions: 230-020-0195, 230-020-0215, 230-140-0000, 230-140-0020, 230-140-0030, 230-140-0040

Proposed Amendments: 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

Proposed Repeals: 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

Proposed Ren. & Amends: 230-010-0040 to 230-020-0015

Last Date for Comment: 5-23-08

Summary: These proposed changes amend three divisions 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 to adopt permanent rules relating to mixed martial arts events and participants. The rules changes affect promoters, professional boxers, mixed martial art contestants (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
Address: Department of Oregon State Police, State Athletic Commission, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 934-0273

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Rule Caption: Repealing Rules Related to Closed Circuit Telecast.
Stat. Auth.:

Other Auth.: *TVKO v. Howland*, 336 Or 527 (2003); OL 3003, Ch. 653, Sec. 3

Stats. Implemented: HB 2399 (2003)
Proposed Repeals: 230-050-0000, 230-050-0005
Last Date for Comment: 5-23-08

Summary: This proposal would repeal 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
Address: Department of Oregon State Police, State Athletic Commission, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 934-0273

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Rule Caption: Updates Rules on Rulemaking Notice and Adopts New Model Rules.

Stat. Auth.: ORS 183.335 & 183.341
Stats. Implemented: ORS 183.335, 183.341 & 183.330
Proposed Amendments: 230-001-0000, 230-001-0005, 230-001-0010

Last Date for Comment: 5-23-08
Summary: Updates rulemaking procedure to clarify that only permanent adoption of the 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

NOTICES OF PROPOSED RULEMAKING

Address: Department of Oregon State Police, State Athletic Commission, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 934-0273

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Rule Caption: Repealing Rules Related to Wrestling.

Stat. Auth.:

Stats. Implemented: HB 3581 (2003)

Proposed Repeals: 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

Last Date for Comment: 5-23-08

Summary: This proposal would repeal rules related to wrestling in light of legislative repeal of statutes related to wrestling. Rules governing the promotion of entertainment wrestling are expected to be moved to a different division by a separate rulemaking proceeding.

Rules Coordinator: Loree Fogleman

Address: Department of Oregon State Police, State Athletic Commission, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 934-0273

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

Rule Caption: Amends Rules Relating to Vehicle Dismantlers.

Date:	Time:	Location:
5-21-08	1:30 p.m.	355 Capitol St. NE, Rm.122 Salem, OR 97301

Hearing Officer: David Eyerly

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.140, 819.010, 819.012, 819.014, 819.016, 819.018, 822.125, 822.130, 822.135, 822.137 & 2007 OL Ch. 683

Stats. Implemented: ORS 809.080, 809.110, 819.010, 819.012, 819.014, 819.016, 819.018, 819.030, 819.040, 819.140, 819.220, 803.380, 822.100, 822.105, 822.110, 822.115, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137, 822.140, 822.145, 822.150 & 2007 OL Ch. 683

Proposed Amendments: 735-024-0070, 735-024-0080, 735-032-0020, 735-152-0000, 735-152-0040, 735-152-0050, 735-152-0060

Last Date for Comment: 5-21-08

Summary: This rulemaking is needed to implement legislation enacted by the 2007 Legislative Assembly. Chapter 683, Oregon Laws 2007: (1) requires dismantlers to surrender a vehicle's title, ownership record or other ownership document to DMV within 30 days of date a vehicle is acquired for dismantling, (2) grants DMV additional authority to impose sanctions on vehicle dismantlers and requires DMV to adopt rules establishing appropriate sanctions, and (3) under the legislative initiative, dismantlers are no longer subject to the requirements of ORS 819.010.

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

Rules Coordinator: Lauri Kunze

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

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Rule Caption: Establishes Eligibility Requirements and Procedures for the Issuance of Veterans' Recognition Registration Plates.

Date:	Time:	Location:
5-21-08	1:30 p.m.	355 Capitol St. NE, Rm.122 Salem, OR 97301

Hearing Officer: David Eyerly

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.535, 805.105, 805.200, 2007 OL Ch. 99

Stats. Implemented: ORS 803.415, 803.420, 803.530, 803.535, 805.105, 805.200 & 2007 OL Ch.99

Proposed Amendments: 735-040-0040, 735-040-0080, 735-040-0090, 735-040-0100

Proposed Repeals: 735-040-0050

Last Date for Comment: 5-21-08

Summary: ORS 805.105 requires DMV to establish: (1) General qualifications for veterans' groups that wish to become eligible for veterans' recognition registration plates; (2) When DMV may cease to issue veterans' recognition registration plates; (3) What constitutes proof of veteran status for the issuance of veterans' recognition registration plates, and (4) What constitutes proof that a person is a surviving family member of a person killed in action during an armed conflict while serving in the Armed Forces of the United States in order to qualify for special veterans' recognition registration plates that include a gold star decal and the words "Gold Star Family." These law changes require DMV to amend its special group registration plate rules to conform to the law changes.

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

Rules Coordinator: Lauri Kunze

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

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Rule Caption: Establishes Procedures and Requirements for the Issuance of Congressional Medal of Honor Registration Plates.

Date:	Time:	Location:
5-21-08	1:30 p.m.	355 Capitol St. NE, Rm.122 Salem, OR

Hearing Officer: David Eyerly

Stat. Auth.: ORS 184.616, 184.619, 802.010, 805.103, 805.200, 805.205 & 805.220

Stats. Implemented: ORS 803.420, 803.530, 803.535, 805.103, 805.200, 805.220, 805.240, 805.242, 805.250 & 1987 OL Ch. 25

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

Last Date for Comment: 5-21-08

Summary: This rulemaking implements legislation enacted by the 2007 Legislative Assembly which directs DMV to issue custom registration plates to motor vehicle owners who are qualified Congressional Medal of Honor recipients. These rules define terms and describe the procedures and requirements for the issuance of custom, or special, registration plates — sometimes referred to as personalized license plates, add new provisions, and reorganize and clarify the definitions set out in the rule. Other changes are made for clarity and readability.

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

Rules Coordinator: Lauri Kunze

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

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Rule Caption: Proof of Residency, Limited Vision Driver Permits, Hardship Permits, Parking Identification Cards — Miscellaneous Changes.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.350, 803.370, 807.050, 807.062, 807.240, 807.252, 807.270, 807.350, 807.368, 811.603, 821.080 & 2008 OL Ch. 1

Stats. Implemented: ORS 802.500, 802.520, 803.200, 803.300, 803.325, 803.350, 803.355, 803.360, 803.370, 807.010, 807.040, 807.045, 807.050, 807.062, 807.240, 807.250, 807.270, 807.355 – 807.368, 807.400, 809.265, 809.380, 809.390, 809.419, 809.421, 811.603, 813.500, 813.602, 821.080, 826.033 & 2008 OL Ch. 1

Proposed Amendments: 735-016-0070, 735-062-0320, 735-064-0020, 735-080-0060, 735-080-0070

Last Date for Comment: 5-21-08

NOTICES OF PROPOSED RULEMAKING

Summary: DMV proposes to include the new statutory term “parking identification card” to refer to the identification card DMV issues without a photograph, and to make the card valid for eight years, rather than four years.

Other proposed amendments include (1) clarification that while Oregon Income Tax Returns may be used as proof of residency or domicile, an Oregon Tax Return for a Nonresident (Form 40N) cannot; (2) confirmation that a person whose driving privileges are suspended because he or she committed a fraudulent or unlawful act in applying for or using a driver license, driver permit or identification card may not be issued a hardship permit; and (3) updates to statutory references and other changes for clarity.

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

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Department of Transportation, Motor Carrier Transportation Division Chapter 740

Rule Caption: Readoption of interstate and international agreements and federal vehicle use-tax regulations.

Stat. Auth.: ORS 184.616, 184.619, 823.011, 825.232, 825.555 & 826.007

Stats. Implemented: ORS 803.370(5), 825.490, 825.555, 826.005, 826.007 & 826.033

Proposed Amendments: 740-200-0010, 740-200-0020, 740-200-0040

Last Date for Comment: 5-21-08

Summary: Many provisions of the International Registration Plan (IRP) related to commercial vehicle proportional registration have been revised effective July 1, 2008. It is necessary to amend OAR 740-200-0010 to adopt the revised version of IRP to coincide with the effective date of the revisions to ensure compliance with, and uniformity in application of, the IRP. International Fuel Tax Agreement (IFTA) and associated material are applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. The revision to OAR 740-200-0040 adopts the most recent version of IFTA and associated material as the procedures and guidelines for Oregon-based IFTA participants to ensure Oregon remains current with national and international IFTA standards. 26 CFR Part 41 (Heavy Vehicle Use Tax — HVUT) relates to federal heavy vehicle taxation. Amendment of OAR 740-200-0020 adopts HVUT and amendments thereto in effect as of January 1, 2008, and ensures Oregon remains current with national commercial motor vehicle registration standards.

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

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Motor Carrier Transportation 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: Amend rules related to ad hoc committees, as well as clarifying contested case proceedings language.

Stat. Auth.: ORS 285A.075

Other Auth.: SB 350 (2007)

Stats. Implemented: ORS 285A.060, 183.413 - 183.470 & 285C.500

Proposed Amendments: 123-001-0050, 123-001-0300, 123-001-0500, 123-001-0520, 123-001-0700, 123-001-0725, 123-001-0750

Last Date for Comment: 5-21-08

Summary: 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

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: Amend rules related to the Community Development Fund.

Stat. Auth.: ORS 285A.075 & 285A.227(2)

Other Auth.: SB 350 (2007)

Stats. Implemented: ORS 285A.227

Proposed Amendments: 123-009-0060, 123-009-0080, 123-009-0090

Last Date for Comment: 5-21-08

Summary: The proposed amendments to administrative rule address the statutory changes implemented 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 changes 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

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 Port Planning and Marketing Fund (Div. 25) rules to the provisions of SB 350 (2007 legislature).

Stat. Auth.: ORS 285A.075

Other Auth.: SB 350 (2007)

Stats. Implemented: ORS 285A.654–385A.660

Proposed Adoptions: 123-025-0014

Proposed Amendments: 123-025-0010, 123-025-0012, 123-025-0017, 123-025-0021, 123-025-0023, 123-025-0025, 123-025-0030

Proposed Repeals: 123-025-0015

Last Date for Comment: 5-21-08

Summary: 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

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 Brownsfields rules (Div. 135) rules to the provisions of SB 350 (2007 Legislature).

Stat. Auth.: ORS 285A.075

Other Auth.: SB 350 (2007)

Stats. Implemented: ORS 285A.185 & 285A.188

Proposed Amendments: 123-135-0020, 123-135-0070

Last Date for Comment: 5-21-08

NOTICES OF PROPOSED RULEMAKING

Summary: The permanent rule implements the statutory changes implemented in SB 350 (2007 Legislature) regarding the Brownsfields by clarifying definition of environmental actions, as well as changing the limitation of funding to liable parties to 60%.

Rules Coordinator: Janelle Lacefield

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

Telephone: (503) 986-0036

Oregon Department of Aviation Chapter 738

Rule Caption: Designation Runway 35 as the Preferential Calm Wind Runway at Aurora State Airport.

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.095 & 836.505

Proposed Amendments: 738-050-0020

Last Date for Comment: 5-30-08, 5 p.m.

Summary: Oregon Department of Aviation (ODA) is implementing recommendations from a noise mitigation study for Aurora State Airport (UAO). Since 2002, several recommended measures regarding aircraft departure/arrival procedures, pilot education measures and airfield signage were successfully put into action to mitigate noise impacts on adjacent residential communities. Recently, the study's primary recommendation was approved by the Federal Aviation Administration (FAA). The study concluded the most effective approach to reducing the noise impact on communities would be to change UAO's preferential runway. On June 5, 2008, ODA will designate Runway 35 as the preferential calm wind runway.

Rules Coordinator: Jennifer Kellar

Address: 3040 25th Street SE, Salem OR 97302-1125

Telephone: (503) 378-4881

Oregon Department of Education Chapter 581

Rule Caption: Prescribes requirements for assessment of essential skills for purposes of determining student eligibility for diploma.

Stat. Auth.: ORS 329.451 & 338.025

Stats. Implemented: ORS 329.045, 329.095, 329.451, 329.485 & 338.115

Proposed Adoptions: 581-022-0615

Last Date for Comment: 5-28-08, 5 p.m.

Summary: Requires school districts and public charter schools to administer local performance assessments to determine students' proficiency in the Essential Skills. Directs Superintendent of Public Instruction to establish panel to make recommendations about phasing in essential skills, assessment pathways and achievement standards.

Rules Coordinator: Paula Merritt

Address: 255 Capital St NE, Salem 97310

Telephone: (503) 947-5746

Rule Caption: Modifies rules relating to standards for elementary and secondary schools.

Stat. Auth.: ORS 326.051 & 329.075

Stats. Implemented: ORS 329

Proposed Adoptions: 581-021-0500

Proposed Amendments: 581-022-0102, 581-022-0606, 581-022-0610, 581-022-0612, 581-022-0705, 581-022-0807, 581-022-1020, 581-022-1060, 581-022-1065, 581-022-1111, 581-022-1120, 581-022-1131, 581-022-1140, 581-022-1210, 581-022-1340, 581-022-1350, 581-022-1670, 581-022-1710, 581-022-1720, 581-022-1730, 581-022-1920

Proposed Repeals: 581-021-0211, 581-022-0803, 581-022-1110, 581-022-1115, 581-022-1120, 581-022-1930

Proposed Renumberings: 581-022-1735 to 581-054-0007

Proposed Ren. & Amends: 581-022-1732 to 581-045-0586, 581-011-0085 to 581-022-1622

Last Date for Comment: 5-28-08, 5 p.m.

Summary: The 2007 Oregon Legislature passed HB 2263 which revised ORS Chapter 329. This included the abolishment of the Certificate of Initial Mastery and the Certificate of Advanced Mastery and other changes. The proposed rulemaking implements these changes. The proposed rulemaking also clarifies what is part of the standards for public elementary and secondary schools.

Rules Coordinator: Paula Merritt

Address: 255 Capital St NE, Salem 97310

Telephone: (503) 947-5746

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.

Stat. Auth.: ORS 690.165, 690.205

Other Auth.: ORS 676.615

Stats. Implemented: ORS 690.165

Proposed Adoptions: 817-015-0070

Proposed Amendments: 817-010-0065, 817-015-0050, 817-015-0065

Last Date for Comment: 5-21-08

Summary: 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 adherence to the American National Standards for Safe Use of Lasers (ANSI) in performing laser skin care services. Rule amendments clarify ambiguity and resolve practice conflicts stemming from the March 2006 rule filing.

Rules Coordinator: Patricia C. Allbritton

Address: Oregon Health Licensing Agency, Board of Cosmetology, 700 Summer St. NE, Ste. 320, Salem, OR 97301-1287

Telephone: (503) 373-2088

Oregon Liquor Control Commission Chapter 845

Rule Caption: Amend two advertising rules to allow modern signing and display practices in retail liquor stores.

Date:	Time:	Location:
6-3-08	10 a.m.-12 p.m.	9079 SE McLoughlin Blvd. Portland, OR

Hearing Officer: Jennifer Huntsman

Stat. Auth.: ORS 471, including 471.030, 471.730(1) & (5) & 471.750

Stats. Implemented: ORS 471.750(2)

Proposed Amendments: 845-015-0175, 845-015-0177

Last Date for Comment: 6-17-08

Summary: OAR 845-015-0177 Specific Requirements for Signs and Displays in a Retail Liquor Store: This rule describes the Commission's specific requirements governing signs and displays in retail liquor stores. The Commission accepted a petition from Southern Wine/Spirits West and Diageo requesting amendment of the rule to both add and delete language which would then allow modern signing and display practices, including the use of electronics and digital displays, in retail liquor stores.

OAR 845-015-0175 General Requirements for Advertising in a Retail Liquor Store: This rule regulates the sorts of advertising that are allowed in retail liquor stores. Because this rule and the rule being petitioned cross-reference each other and both rules contain language regarding signs and displays in retail liquor stores the Commission initiated rulemaking for this rule when it accepted the petition to amend OAR 845-015-0177.

Rules Coordinator: Jennifer Huntsman

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

Telephone: (503) 872-5004

NOTICES OF PROPOSED RULEMAKING

Oregon Public Employees Retirement System Chapter 459

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

Date: 5-27-08
Time: 2 p.m.
Location: PERS HQ
11410 SW 68th Pkwy
Tigard, OR

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: 7-1-08

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.

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

Rule Caption: Conform rollovers rules to federal requirements.

Date: 5-27-08
Time: 2 p.m.
Location: PERS HQ
11410 SW 68th Pkwy
Tigard, OR

Hearing Officer: Daniel Rivas
Stat. Auth.: ORS 238.650, 238A.450 & 243.470
Stats. Implemented: ORS 238.005-238.715 & 243.401-243.507
Proposed Amendments: 459-005-0591, 459-005-0595, 459-005-0599, 459-050-0090
Last Date for Comment: 7-1-08

Summary: The Pension Protection Act of 2007 (PPA) allows plan sponsors to permit participants receiving eligible rollover distributions to roll the distribution 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 is starting the process of amending four administrative rules to reflect this ability, retroactive to January 1, 2008.

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

Rule Caption: Conform public records rules to Senate Bill 554 requirements.

Date: 5-27-08
Time: 2 p.m.
Location: PERS HQ
11410 SW 68th Pkwy
Tigard, OR

Hearing Officer: Daniel Rivas
Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 192.410-192.505
Proposed Adoptions: 459-060-0001, 459-060-0010
Proposed Repeals: 459-060-0000
Last Date for Comment: 7-1-08

Summary: Modifies Public Records rules to comply with Senate Bill 554 (2007), which amends ORS 192.440 to require a prompt response acknowledging receipt of a public records request, and that a public body must make available to the public a written procedure for making public records requests.

Sets forth how to request public records, including content of the request and associated fees and costs, as well as the staff response to the public records requests.

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

Rule Caption: Establishes that an employer applying for participation in OPSRP must participate in all PERS programs.

Date: 5-27-08
Time: 2 p.m.
Location: PERS HQ
11410 SW 68th Pkwy
Tigard, OR

Hearing Officer: Daniel Rivas
Stat. Auth.: ORS 238.650 & 238A.450
Stats. Implemented: ORS 238A.025, 238A.070, 238A.100 & OL 2007 Ch. 739

Proposed Amendments: 459-070-0050, 459-075-0010
Last Date for Comment: 7-1-08

Summary: Modifications to OAR 459-070-0050 establish that an employer that applies to participate in the Oregon Public Service Retirement Plan (OPSRP) must participate in the OPSRP Pension Program, the Individual Account Program, and the PERS Chapter 238 Program. Modifications to OAR 459-075-0010 eliminate provisions regarding concurrent membership in OPSRP and the PERS Chapter 238 Program.

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

Oregon State Marine Board Chapter 250

Rule Caption: Establish slow no-wake zone in Prineville Reservoir adjacent to the resort marina.

Date: 5-20-08
Time: 7-8:30 p.m.
Location: County Annex-
County Meeting Rm.
320 NE Court St./3rd St.
Prineville, OR 97754

Hearing Officer: Mr. Randy Henry
Stat. Auth.: ORS 830
Stats. Implemented: ORS 830.110 & 830.175
Proposed Amendments: 250-020-0073
Last Date for Comment: 5-31-08, 5 p.m.

Summary: OSMB is proposing to amend the regulation by adopting a 5-mph slow-no-wake zone in Prineville Reservoir adjacent to the Prineville Reservoir Marina. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: June LeTarte
Address: 435 Commercial Street NE #400 Salem, OR 97309
Telephone: (503) 378-2617

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

Date: 5-13-08
Time: 6-8 p.m.
Location: Clackamas Comm. College
Wilsonville Training Ctr.,
Rm. 111/112
29353 Town Ctr Loop E.
Wilsonville, OR 97070

Hearing Officer: Mr. Randy Henry
Stat. Auth.: ORS 830
Stats. Implemented: ORS 830.110 & 830.175
Proposed Amendments: 250-010-0010, 250-020-0032, 250-020-0385
Last Date for Comment: 5-31-08, 5 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: OSMB is proposing to amend the rules governing the Willamette River from RM 31.5 at the upper end of Willow Island to RM 48.5 at the Hwy 219 Bridge and from I-5 Boones Ferry Bridge at RM 38 to the Railroad Bridge immediately upriver by establishing no-wake and congestion zone designations. In support of the proposed rules, OSMB will also recommend the adoption of new definitions, as needed. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency. The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

Rules Coordinator: June LeTarte
Address: 435 Commercial Street NE #400 Salem, OR 97309
Telephone: (503) 378-2617

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

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

Date: 5-22-08 **Time:** 2 p.m. **Location:** Snell Hall, Rm. 215
OIT, 3201 Campus Dr.
Klamath Falls, OR

Hearing Officer: Bob Nettles
Stat. Auth.: ORS 351
Stats. Implemented: ORS 351.070
Proposed Amendments: 578-041-0030
Last Date for Comment: 5-30-08

Summary: 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 services fees for fiscal year 2008-09. The schedule of subject fees may be obtained from the Oregon Institute of Technology office.

Rules Coordinator: Ceilia E. Foster
Address: Oregon University System, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97601
Telephone: (541) 885-1105

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Rule Caption: To amend text revisions to the Responsibility in Traffic Control.

Date: 5-22-08 **Time:** 2 p.m. **Location:** Snell Hall, Rm. 215
OIT, 3201 Campus Dr.
Klamath Falls, OR

Hearing Officer: Bob Nettles
Stat. Auth.: ORS 351
Stats. Implemented: ORS 351.070
Proposed Amendments: 578-072-0010
Last Date for Comment: 5-30-08

Summary: 578-072-0010 Amends the Responsibility in Traffic Control. Amendments allow for text revisions for the fiscal year 2008-09. The revisions of the Responsibility in Traffic Control can be obtained from the Oregon Institute of Technology Finance and Administration office.

Rules Coordinator: Ceilia E. Foster
Address: Oregon University System, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97601
Telephone: (541) 885-1105

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Rule Caption: To amend the Parking Fees.

Date: 5-22-08 **Time:** 2 p.m. **Location:** Snell Hall, Rm. 215
OIT, 3201 Campus Dr.
Klamath Falls, OR

Hearing Officer: Bob Nettles
Stat. Auth.: ORS 351
Stats. Implemented: ORS 351.070

Proposed Amendments: 578-072-0030

Last Date for Comment: 5-30-08

Summary: 578-072-0030 Amends the Parking and Permit Fees. Amendments allow for cost increases for fiscal year 2008-09. The schedule of parking fees may be obtained from the Oregon Institute of Technology, Finance and Administration office.

Rules Coordinator: Ceilia E. Foster
Address: Oregon University System, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97603
Telephone: (541) 885-1105

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Rule Caption: To amend text revisions to Parking on Campus.

Date: 5-22-08 **Time:** 2 p.m. **Location:** Snell Hall, Rm. 215
OIT, 3201 Campus Dr.
Klamath Falls, OR

Hearing Officer: Bob Nettles
Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070
Proposed Amendments: 578-072-0050
Last Date for Comment: 5-30-08

Summary: 578-072-0050 Amends the Parking on Campus. Amendments allow for text revisions for the fiscal year 2008-09. The revisions of the Parking on Campus can be obtained from the Oregon Institute of Technology Finance and Administration office.

Rules Coordinator: Ceilia E. Foster
Address: Oregon University System, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97601
Telephone: (541) 885-1105

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Rule Caption: To increase fees to the Penalties for Offenses.

Date: 5-22-08 **Time:** 2 p.m. **Location:** Snell Hall, Rm. 215
OIT, 3201 Campus Dr.
Klamath Falls, OR

Hearing Officer: Bob Nettles
Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070
Proposed Amendments: 578-072-0070
Last Date for Comment: 5-30-08

Summary: 578-072-0070 To increase the fees for the Penalties for Offenses. Amendments allow for fee increases for the fiscal year 2008-09. The amendments of the Penalties for Offenses can be obtained from the Oregon Institute of Technology Finance and Administration office.

Rules Coordinator: Ceilia E. Foster
Address: Oregon University System, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97601
Telephone: (541) 885-1105

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

Rule Caption: Revision of Division 4: Access to Public Records, to conform to new legislation.

Date: 5-29-08 **Time:** 1:30 p.m. **Location:** MU 206
Oregon State University
Corvallis, OR

Hearing Officer: Barbara Melton
Stat. Auth.: ORS 192.430, 192.440 & 351.070
Stats. Implemented: ORS 192.430, 192.440 & 351.070

Proposed Amendments: 576-004-0000, 576-004-0005, 576-004-0015, 576-004-0020
Last Date for Comment: 6-2-08

Summary: Division 4 of OAR 576, entitled "Access to Public Records," provides guidelines for the University and the public regarding how properly to make public records requests and how the

NOTICES OF PROPOSED RULEMAKING

University responds to public records requests. The University is amending Division 4 in response to the Oregon State Legislature's adoption of changes to the Oregon Public Records Law, at ORS 192.440. Consistent with those changes, the proposed amendments clarify where persons may obtain the University's written procedures for making public records requests, where persons may obtain information regarding the fees the University charges to respond to public records requests, how persons may obtain a waiver of fees, and how the University may respond to public records requests.

Rules Coordinator: Barbara Melton
Address: Oregon University System, Oregon State University, 638 Kerr Administration Bldg., Corvallis, OR 97331-2128
Telephone: (541) 737-6262

Rule Caption: Setting fees and charges at Oregon State university for fiscal year 2008–2009.

Date:	Time:	Location:
5-29-08	12 p.m.	MU 206 Oregon State University Corvallis, OR

Hearing Officer: Barbara Melton
Stat. Auth.: ORS 351.070 & 352.360
Other Auth.: OAR 580-040-0010
Stats. Implemented: ORS 351.070 & 352.360
Proposed Amendments: 576-010-0000
Last Date for Comment: 6-2-08

Summary: The proposed amendment will set fees and charges for designated services at Oregon State University for fiscal year 2008–2009. The rules state: "The University hereby adopts by reference a list of fees and charges for fiscal year 2008–2009. The list of fees and charges is available at the Oregon State University Office of Budget and Fiscal Planning and the Oregon State University Valley Library, and is hereby incorporated by reference in the rule."

Rules Coordinator: Barbara Melton
Address: Oregon University System, Oregon State University, 638 Kerr Administration Bldg., Corvallis, OR 97331-2128
Telephone: (541) 737-6262

Rule Caption: Collecting Accounts and Notes Receivable.

Date:	Time:	Location:
5-29-08	1 p.m.	MU 206 Oregon State University Corvallis, OR

Hearing Officer: Barbara Melton
Stat. Auth.: ORS 351.070
Other Auth.: OAR 580-041-0010
Stats. Implemented: ORS 351.070
Proposed Adoptions: 576-010-0011
Last Date for Comment: 6-2-08

Summary: The Collecting Accounts and Notes Receivable rule identifies the remedies the University may pursue to collect delinquent accounts and notes receivable that are due the University. The remedies identified include, but are not limited to, withholding University services from delinquent debtors, denying or canceling delinquent debtors' registration, and contracting with collection agencies to pursue the amounts owed the University.

Rules Coordinator: Barbara Melton
Address: Oregon University System, Oregon State University, 638 Kerr Administration Bldg., Corvallis, OR 97331-2128
Telephone: (541) 737-6262

Rule Caption: Revolving Charge Account Program.

Date:	Time:	Location:
5-29-08	12:30 p.m.	MU 206 Oregon State University Corvallis, OR

Hearing Officer: Barbara Melton
Stat. Auth.: ORS 351.070
Other Auth.: OAR 580-040-0041

Stats. Implemented: ORS 351.070
Proposed Adoptions: 576-010-0021
Last Date for Comment: 6-2-08

Summary: The Revolving Charge Account Program Rule creates a Revolving Charge Account Program that would allow the University to offer extended payment terms to parties that incur debts, including charges, fines, or penalties, at the University. The Revolving Charge Account Program rule describes the terms and conditions of the program and provides information regarding the interest to be charged for unpaid balances placed on University revolving charge accounts.

Rules Coordinator: Barbara Melton
Address: Oregon University System, Oregon State University, 638 Kerr Administration Bldg., Corvallis, OR 97331-2128
Telephone: (541) 737-6262

Rule Caption: Articles Prohibited in Certain Athletics Facilities.

Date:	Time:	Location:
5-29-08	2 p.m.	Memorial Union 206 Oregon State University Corvallis, OR

Hearing Officer: Barbara Melton
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Proposed Amendments: 576-024-0000
Last Date for Comment: 6-2-08

Summary: This rule allows individuals attending events open to the public to carry backpacks and other small bags used for carrying personal possessions into Reser Stadium, the area within the defining fence around Reser stadium, and Gill Coliseum. The rule requires such individuals to submit their backpacks and other small bags used for carrying personal possessions for bag inspections before entering the designated areas. Bag inspections made pursuant to this rule do not include pat-down inspection of the individuals carrying backpacks or other small bags used for carrying personal possessions into the designated areas. Finally, this rule restricts those who may carry weapons into these designated areas during events open to the public to on-duty law enforcement officials assigned to the events.

Rules Coordinator: Barbara Melton
Address: Oregon University System, Oregon State University, 638 Kerr Administration Bldg., Corvallis, OR 97331-2128
Telephone: (541) 737-6262

Rule Caption: Alcoholic Beverage Policy.

Date:	Time:	Location:
5-29-08	2:30 p.m.	MU 206 Oregon State University Corvallis, OR

Hearing Officer: Barbara Melton
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Proposed Adoptions: 576-060-0031
Proposed Amendments: 576-060-0010, 576-060-0015, 576-060-0020, 576-060-0025, 576-060-0035, 576-060-0037, 576-060-0038, 576-060-0039, 576-060-0040
Last Date for Comment: 6-2-08

Summary: The Alcoholic Beverage policy rules provide a more comprehensive alcoholic beverage policy for the University by addressing service and consumption of alcoholic beverages in and around the University football stadium, by clarifying the procedures and requirements for approval to serve alcoholic beverages consistent with the University policies, and by adding an additional enforcement mechanism to the rules.

Rules Coordinator: Barbara Melton
Address: Oregon University System, Oregon State University, 638 Kerr Administration Bldg., Corvallis, OR 97331-2128
Telephone: (541) 737-6262

NOTICES OF PROPOSED RULEMAKING

Oregon University System, Portland State University Chapter 577

Rule Caption: Amends Portland State University's Procedural Rules on Rulemaking.

Stat. Auth.: ORS 183 & 351

Stats. Implemented: ORS 183.335, 183.341, 183.355, 183.390 & 183.715

Proposed Amendments: 577-001-0005, 577-001-0010, 577-001-0020, 577-001-0025, 577-001-0035, 577-001-0040, 577-001-0041, 577-001-0045, 577-001-0050

Proposed Repeals: 577-001-0001, 577-001-0014, 577-001-0015, 577-001-0030

Last Date for Comment: 6-13-08

Summary: The proposed amendments to Portland State University's procedural rules governing the university's administrative rule making process are necessary to align and conform the process to the requirements of the Oregon Administrative Procedures Act. A copy of the Notice of Proposed Rulemaking, Statement of Need and Fiscal Impact and the text of the proposed rule can be found at <http://www.pdx.edu/fadm>

Rules Coordinator: Tanja Dill

Address: Oregon University System, Portland State University, PO Box 751, Portland, OR 97207

Telephone: (503) 725-3701

Rule Caption: Amends Portland State University's Rules Regarding Maintenance of and Access to Student Records.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070 & 20 USC 1232g

Proposed Adoptions: 577-030-0016, 577-030-0021

Proposed Amendments: 577-030-0005, 577-030-0010, 577-030-0015, 577-030-0020, 577-030-0025, 577-030-0030, 577-030-0040, 577-030-0045, 577-030-0050, 577-030-0060, 577-030-0065, 577-030-0070

Proposed Repeals: 577-030-0075

Last Date for Comment: 6-13-08

Summary: Portland State University is required to comply with the federal Family Educational Rights and Privacy Act of 1974 ("FERPA") and the regulations of the U.S. Department of Education implementing FERPA. The proposed amendments to Portland State University's rules regarding student records better align Portland State University's rules regarding maintenance of and access to student records with the rights and procedures afforded to students by FERPA. A copy of the Notice of Proposed Rulemaking, Statement of Need and Fiscal Impact and the text of the proposed rules can be found at <http://www.pdx.edu/fadm>

Rules Coordinator: Tanja Dill

Address: Oregon University System, Portland State University, PO Box 751, Portland, OR 97207

Telephone: (503) 725-3701

Rule Caption: Amends Portland State University's Rule Regarding Health Insurance Requirements for Non-immigrant International Students and Dependents.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Proposed Ren. & Amends: 577-030-0080 to 577-034-0001

Last Date for Comment: 6-13-08

Summary: The proposed amendments update Portland State University's administrative rules establishing health insurance requirements for non-immigrant international students and their dependents living in the United States. These amendments provide greater detail than the current rule, consistent with current University practice. A copy of the Notice of Proposed Rulemaking, Statement of Need and Fiscal Impact and the text of the proposed rules can be found at <http://pdx.edu/fadm>

Rules Coordinator: Tanja Dill

Address: Oregon University System, Portland State University, PO Box 751, Portland, OR 97207

Telephone: (503) 725-3701

Oregon University System, Southern Oregon University Chapter 573

Rule Caption: Parking Enforcement and Appeals.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Proposed Amendments: 573-050-0045

Last Date for Comment: 5-14-08

Summary: This amendment in Division 50 increases permit fees only including all types of permits and fees.

Rules Coordinator: Treasa Sprague

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

Telephone: (541) 552-6319

Oregon Utility Notification Center Chapter 952

Rule Caption: In the Matter of a Rulemaking to Clarify OAR 952-001-0070.

Stat. Auth.: ORS 183 & 757, OL 1995, Ch. 691

Stats. Implemented: ORS 757.542 & 757.552

Proposed Amendments: 952-001-0070

Last Date for Comment: 5-23-08, Close of Business

Summary: The proposed amendments to OAR 952-001-0070 clarify the wording of paragraph (1)(c) regarding acceptable notifications and in particular the repeat option. The proposed amendment clarifies that if an Automatic voice response is used, it must have a repeat option and a call back number to hear the information again. The amendment reflects current industry practice.

Rules Coordinator: Diane Davis

Address: Oregon Utility Notification Center, 550 Capitol St. NE, Suite 215, Salem, OR 97301-2551

Telephone: (503) 378-4372

Public Utility Commission Chapter 860

Rule Caption: In the Matter of Rulemaking to Update Division 29 Rules.

Date:
5-29-08

Time:
9:30 a.m.

Location:
550 Capitol St. NE
1st Flr., Main Hearing Rm.
Salem, OR

Hearing Officer: Michael Grant

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 756.040, 757.612 & 758.505-758.555

Proposed Adoptions: 860-029-0100

Proposed Amendments: 860-029-0001

Last Date for Comment: 5-29-08, Close of Hearing

Summary: This is the first phase of rulemaking to update the division 29 rules. The proposed amendment to 860-029-0001 is resultant from 2007 legislative changes, specifically Senate Bill 838, Section 27(4). The proposed rule 860-029-0100 is resultant from Commission Order No. 07-360 in docket UM 1129. In that order, the Commission clarified its intent regarding the scope of a proceeding where a complaint is filed regarding the negotiation of a Qualifying Facility power purchase agreement. The dispute resolution procedures are intended to reduce the time and costs in resolving disputes for customers, utilities and the Commission. Further updates to the Division 29 rules, as a result of Commission Orders in docket UM 1129 and change in federal and state law, will be addressed in a second phase of this rulemaking.

Rules Coordinator: Diane Davis

NOTICES OF PROPOSED RULEMAKING

Address: Public Utility Commission of Oregon, 550 Capitol St. NE, Suite 215, Salem, OR 97301-2551
Telephone: (503) 378-4372

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

Date:	Time:	Location:
5-28-08	9:30 a.m.	Administrative Law Judge's Workshop, PUC 550 Capitol St. NE 1st Flr. Main Hearing Rm. Salem, OR
6-11-08	9:30 a.m.	Administrative Law Judge's Workshop, PUC 550 Capitol St. NE 1st Flr. Main Hearing Rm. Salem, OR

Hearing Officer: Sarah Wallace

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 756.060

Proposed Adoptions: 860-082-0005 – 860-082-0080

Last Date for Comment: 6-11-08, Close of Hearing

Summary: The proposed rules provide procedures and standards for connecting a small generator facility of up to 10 MW output located on an interconnection customer's premises, to a regulated company's distribution or transmission system. These proposed rules are revised from the proposed rules noticed in the September 2007 Oregon Bulletin. 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. The proposed rules will impact regulated electric companies and customers who desire to connect to 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.

Rules Coordinator: Diane Davis

Address: Public Utility Commission of Oregon, 550 Capitol St. NE, Suite 215, Salem, OR 97301-2551

Telephone: (503) 378-4372

Real Estate Agency Chapter 863

Rule Caption: License applicant criminal background check rules.

Date:	Time:	Location:
5-21-08	11 a.m.	Real Estate Agency 1177 Center St. NE Salem, OR

Hearing Officer: Bryan Cavaness

Stat. Auth.: ORS 181.534, 696.022, 696.301, 696.790

Stats. Implemented: ORS 181.534

Proposed Adoptions: 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

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

Summary: New rules implement House Bill 2157 (2005) requiring a criminal record check and criminal background fitness determination for license applicants.

Rules Coordinator: Laurie Skillman

Address: Real Estate Agency, 1177 Center St. NE, Salem, OR 97301

Telephone: (503) 378-4630

Rule Caption: Real estate advertising.

Date:	Time:	Location:
5-21-08	10 a.m.	Real Estate Agency 1177 Center St. NE Salem, OR

Hearing Officer: Laurie Skillman

Stat. Auth.: ORS 696.385

Stats. Implemented: ORS 696.020 & 696.301(1), (4)

Proposed Amendments: 863-015-0125

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

Summary: Advertising rule includes (1) 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; (2) the licensee's licensed name must be used or a common derivative of the licensee's first name; (3) all advertising must be submitted to the principal real estate broker for review and approval prior to releasing advertising to the public; (4) requirements for licensees advertising in electronic media and by electronic communication; and (5) requirements for licensees who use the terms "team" or "group" in advertising.

Replaces temporary rule in effect January 18, 2008, through July 15, 2008.

Rules Coordinator: Laurie Skillman

Address: Real Estate Agency, 1177 Center St. NE, Salem, OR 97301

Telephone: (503) 378-4630

Rule Caption: Review of all escrow administrative rules in chapter 863, division 50.

Stat. Auth.: ORS 183 & 696

Stats. Implemented: ORS 696

Proposed Amendments: 863-050-0000, 863-050-0015, 863-050-0020, 863-050-0025, 863-050-0030, 863-050-0033, 863-050-0035, 863-050-0040, 863-050-0050, 863-050-0055, 863-050-0060, 863-050-0065, 863-050-0066, 863-050-0100, 863-050-0105, 863-050-0115, 863-050-0150, 863-050-0151, 863-050-0205, 863-050-0210, 863-050-0215, 863-050-0220, 863-050-0225, 863-050-0230, 863-050-0235, 863-050-0240

Last Date for Comment: 6-1-08, 5 p.m.

Summary: The purpose of this collaborative rulemaking is to make needed changes to current rules. Public hearing dates will be set on specific rules.

Rules Coordinator: Laurie Skillman

Address: Real Estate Agency, 1177 Center St. NE, Salem, OR 97301

Telephone: (503) 378-4630

Water Resources Department Chapter 690

Rule Caption: Administrative rules implementing a planning studies grant program required under SB 1069 (2008 OL Ch. 13)

Date:	Time:	Location:
5-22-08	1 p.m.	725 NE Summer St., 3rd Flr. Rogue River Confr. Rm. Salem, OR

Hearing Officer: Tom Paul

Stat. Auth.: ORS 536.027

Stats. Implemented: 2008 OL Ch. 13

Proposed Adoptions: Rules in 690-600

Last Date for Comment: 5-22-08

Summary: Senate Bill 1069, enacted into law by the Oregon State Legislature and effective on March 5, 2008, 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 1069 directs the Department to adopt rules necessary to administer the grant program and requires that these rules include provisions that: (1) establish reporting requirements for grants awarded under the Act; (2) provide for public comment before the award of grants and payment of direct services under the Act; and (3) implement the priorities required by the Act. This rulemaking action is intended to meet the rules adoption and rules provisions required under SB 1069 (2008 OL Ch. 13).

Rules Coordinator: Ruben Ochoa

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

Telephone: (503) 986-0874

ADMINISTRATIVE RULES

Board of Examiners for Speech-Language Pathology and Audiology Chapter 335

Rule Caption: Person requesting a hearing must respond in writing; defines requirements for reconsideration/rehearing of cases.

Adm. Order No.: SPA 1-2008

Filed with Sec. of State: 4-10-2008

Certified to be Effective: 4-10-08

Notice Publication Date: 3-1-2008

Rules Adopted: 335-001-0008

Rules Amended: 335-001-0005, 335-001-0011

Subject: New rule requires that a person requesting an administrative hearing to respond in writing stating claims and defenses. Amended rules define the requirements for reconsideration and rehearing of contested cases and adopts specific Attorney General's Model Rules in Oregon Administrative rules chapter 137.

Rules Coordinator: Brenda Carley—(503) 731-4050

335-001-0005

Model Rules of Procedure

The Board adopts the Attorney General's Model Rules, Oregon Administrative Rule Chapter 137, division one, division four and Oregon Administrative Rules 137-003-0501 to 137-003-0700.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Board of Examiners for Speech Pathology and Audiology.]

Stat. Auth.: ORS 681.420(5)

Stats. Implemented: ORS 183.341

Hist.: SPA 2, f. & ef. 7-29-76; SPA 1-1980, f. & ef. 9-2-80; SPA 1-1986, f. & ef. 9-9-86; SPA 1-1996, f. & cert. ef. 6-7-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 5-2006, f. & cert. ef. 11-3-06; SPA 2-2007, f. & cert. ef. 2-9-07; SPA 1-2008, f. & cert. ef. 4-10-08

335-001-0008

Requesting a Hearing; Stating Claims and Defenses

(1) When requesting a hearing, or within fourteen (14) days following a request for hearing, the person responding to the notice must admit or deny, in writing, all factual matters stated in the notice. Any factual matters not denied shall be presumed admitted.

(2) When requesting a hearing, or within fourteen (14) days following a request for hearing, the person responding to the notice shall affirmatively state, in writing, any and all claims or defenses the person may have and the reason that supports the claim of defense. Failure to raise a claim or defense shall be presumed to be a waiver of such claim.

(3) Evidence shall not be taken on any issue not raised in the notice and either the request for hearing or a subsequent statement within fourteen (14) days following the request for hearing as required in sections (1) and (2) of this rule.

Stat. Auth.: ORS 681.420(5)

Stats. Implemented: ORS 183.341

Hist.: SPA 1-2008, f. & cert. ef. 4-10-08

335-001-0011

Reconsideration and Rehearing — Contested Cases

(1) A party may file a petition for reconsideration or rehearing of a final order in a contested case with the agency within 60 calendar days after the order is served. A copy of the petition shall also be delivered or mailed to all parties or other persons and agencies required by statute, rule, or order to receive notice of the proceeding.

(2) The petition shall set forth the specific grounds for reconsideration or rehearing. The petition may be supported by a written argument.

(3) A rehearing may be limited by the agency to specific matters.

(4) The petition may include a request for stay of a final order if the petition complies with the requirements of OAR 137-003-0090(2).

(5) The agency may consider a petition for reconsideration or rehearing as a request for either or both. The petition may be granted or denied by summary order and, if no action is taken, shall be deemed denied as provided in ORS 183.482.

(6) Within 60 calendar days after the order is served, the agency may, on its own initiative, reconsider the final order or rehear the case. If a petition for judicial review has been filed, the agency must follow the procedures set forth in ORS 183.482(6) before taking further action on the order. The procedural and substantive effect of reconsideration or rehearing under this section shall be identical to the effect of granting a party's petition for reconsideration or rehearing.

(7) Reconsideration or rehearing shall not be granted after the filing of a petition for judicial review, except in the manner provided by ORS 183.482(6).

(8) A final order remains in effect during reconsideration or rehearing until stayed or changed.

(9) Following reconsideration or rehearing, the agency shall enter a new order, which may be an order affirming the existing order.

Stat. Auth.: ORS 681.420(5)

Stats. Implemented: ORS 183.341

Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2008, f. & cert. ef. 4-10-08

Rule Caption: Defines sexual harassment, requirements for reporting a change of address, clarifies reference in 070-0040.

Adm. Order No.: SPA 2-2008

Filed with Sec. of State: 4-10-2008

Certified to be Effective: 4-10-08

Notice Publication Date: 3-1-2008

Rules Amended: 335-005-0010, 335-005-0020, 335-070-0040

Subject: Amended rules add new definition of sexual harassment. Division 5 rule revision adds a requirement for licensees to report changes of mailing address within 30 days. Division 70 rule revision clarifies reference from "above" to the actual rule number being referenced.

Rules Coordinator: Brenda Carley—(503) 731-4050

335-005-0010

Definitions

Misrepresentation includes any untrue statements or statements that are likely to mislead. Misrepresentation also includes the failure to state any information that is material and that ought, in fairness, to be considered. Unprofessional Conduct means:

(1) Failure or refusal of an applicant for a license from the Board or of a licensee of the Board to cooperate fully in any investigation conducted by the Board.

(2) Making a false statement to the Board.

(3) Attempting to obtain a license from the Board by means of fraud, misrepresentation, or concealment of material facts.

(4) Sexual misconduct with a client.

(5) Any act of theft, dishonesty or misrepresentation involving a client, another practitioner, third party providers, or a government agency.

(6) Habitual or excessive use of intoxicants, drugs or controlled substances.

(7) Assisting or permitting any person to practice speech-language pathology or audiology without a license.

(8) Practicing speech-language pathology or audiology when impaired by drugs, alcohol or any other substance.

(9) Verbal or physical abuse of a client.

(10) Sexual harassment: Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(c) Such conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

Stat. Auth.: ORS 681

Stat. Implemented: ORS 681.330

Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 2-2008, f. & cert ef. 4-10-08

335-005-0020

Professional Competence

(1) Individuals shall engage in only those aspects of the professions that are within the scope of their competence, considering their level of education, training, and experience.

(2) Individuals shall continue their professional development throughout their careers.

(3) Individuals who supervise shall prohibit any of their professional staff from providing services that exceed the staff member's competence, considering the staff member's level of education, training, and experience.

(4) Individuals shall ensure that all equipment used in the provision of services is in proper working order and is properly calibrated.

ADMINISTRATIVE RULES

(5) Individuals shall prohibit anyone under their supervision from engaging in any practice that violates the Professional and Ethical Standards.

(6) Individuals shall not provide professional services without exercising independent professional judgment, regardless of referral source or prescription.

(7) Individuals shall not discriminate in their relationships with colleagues, students, and members of allied professions on the basis or race or ethnicity, gender, age, religion, national origin, sexual orientation, or disability.

(8) Licensees will provide current addresses and telephone numbers within thirty (30) days of the effective date of change.

(9) Individuals shall cooperate fully with the Board in every matter related to these Professional and Ethical Standards.

Stat. Auth.: ORS 681

Stats. Implemented: ORS 681.330

Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 2-2008, f. & cert. ef. 4-10-08

335-070-0040

Procedures for Special Board Approval of Professional Development Offerings

Approval of professional development activities not specified in OAR 335-070-0030 may be requested from the Board by an institution, organization, agency or individual licensee. Such requests may be submitted before or after the professional development activity takes place. A request made later than 30 days after a professional development offering takes place is considered to be late. If a requestor wishes to have a late request for special Board approval considered, the requestor needs to pay the delinquent fee. No late requests for special Board approval will be considered between November 1st of odd-numbered years and January 30 of even-numbered years. All requests must be submitted on a form provided by the board, stating the type of learning activity, the subject matter, the names and qualifications of the instructors and the number of professional development hours offered. An activity shall qualify for approval if the board determines that the activity:

(1) Is an organized program of learning; and

(2) Pertains to subject matter which integrally relates to the practice of speech-language pathology and/or audiology; and

(3) Contributes to the professional competency of the licensee; and

(4) Is conducted by individuals who have education, training or experience acceptable to the Board.

(5) Credit for the hours of a single presentation will be acceptable if the presenter submits the request for approval within the required time-frame and meets criteria (1) through (4) above.

(6) Credit will not be given for attending or participating in a particular activity more than once in a licensing period.

Stat. Auth.: ORS 681.420(5) & 681.460

Stats. Implemented: ORS 681.320(1)(a)

Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2005, f. & cert. ef. 9-13-05; SPA 2-2006, f. & cert. ef. 5-8-06; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-07, f. & cert. ef. 2-1-07; SPA 2-2008, f. & cert. ef. 4-10-08

Rule Caption: Revises many rules governing speech-language pathology assistants and increases Permit fee.

Adm. Order No.: SPA 3-2008

Filed with Sec. of State: 4-10-2008

Certified to be Effective: 4-10-08

Notice Publication Date: 3-1-2008

Rules Amended: 335-060-0010, 335-095-0010, 335-095-0030, 335-095-0040, 335-095-0050, 335-095-0055, 335-095-0060, 335-095-0065

Subject: Amends most rules in Division 95, Speech-Language Pathology Assistants. Distinguishes qualifications for being a supervisor of speech assistants from the requirements for supervising licensed assistants. Clarifies what is required for direct and indirect supervision and the documentation of. Revises scope of duties for the speech assistant. Sets the expiration for annual permits for July 31st of each school year. Raises the annual fee from \$60 to \$80.

Rules Coordinator: Brenda Carley—(503) 731-4050

335-060-0010

Fees

In accordance with the provisions of ORS 681.340 and 681.360, the following fees, where applicable, are payable to the Board/Health Division by check or money order:

(1) All Applicants except those listed in (1) (d):

(a) Application fee shall be \$40, non-refundable.

(b) Delinquent fee shall be \$50.

(c) The Board may provide for waiver of the license or certificate fee where the license or certificate is issued less than 45 days before the date on which it will expire.

(d) Speech-language pathologists applying for permission to supervise speech-language pathology assistants in schools shall pay an annual application fee of \$80.

(2) Speech-Language Pathologists and Audiologists:

(a) Biennial license fee and renewal thereof shall be \$160.

(b) Biennial inactive license fee and renewal thereof shall be \$50.

(c) Conditional license fee and renewal thereof shall be \$50.

(3) Speech-Language Pathology Assistants:

(a) Biennial certificate fee and renewal thereof shall be \$50.

(b) Biennial inactive certificate fee and renewal thereof shall be \$20.

Stat. Auth.: ORS 681.340, 681.360, 681.420 & 681.460

Stats. Implemented: ORS 681.340(1), 681.360(2)(b) & 681.360(3)(b)

Hist.: SPA 2-1993(Temp), f. 12-8-93, cert. ef. 12-10-93; SPA 1-1994, f. & cert. ef. 6-10-94; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2002(Temp), f. 11-8-02, cert. ef. 12-1-02 thru 5-1-03; SPA 1-2003, f. & cert. ef. 5-7-03; SPA 1-2005, f. & cert. ef. 9-13-05; SPA 3-2008, f. & cert. ef. 4-10-08

335-095-0010

Definitions

(1) Approved Training Program: A post secondary training program that has approval by the Oregon Board of Examiners for Speech-Language Pathology & Audiology to offer specific coursework and practica leading to licensure as a speech-language pathology assistant.

(2) Assessment: A qualitative and quantitative process, conducted by a licensed SLP, that measures the degree of communication impairment conducted by a licensed SLP including, but not limited to, screening, norm and criterion referenced testing, behavioral observations, and clinical interview.

(3) Clinical Interaction: Interaction where the speech-language pathology assistant (SLPA) or practicum student is actively involved by participating in or leading a therapy session.

(4) Direct Supervision: On-site, in-view observation and guidance by a speech-language pathologist while a speech-language pathology assistant performs a clinical interaction.

(5) Indirect Supervision: Those activities other than direct observation and guidance conducted by a speech-language pathologist that may include consultation, record review, review and evaluation of audio- or videotaped sessions.

(6) Speech-Language Pathology Assistant: A person who provides speech-language pathology services under the direction and supervision of a speech-language pathologist licensed under ORS 681.250.

Stat. Auth.: ORS 681.205, 681.360, 681.370, 681.375, 681.420 & 681.460

Stats. Implemented: ORS 681.360, 681.370 & 681.375

Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 3-2006, f. & cert. ef. 5-8-06; SPA 3-2008, f. & cert. ef. 4-10-08

335-095-0030

Certification of Speech-Language Pathology Assistants

Applicants must submit all of the following to be eligible for certification.

(1) Official transcripts showing 45 quarter hours or 30 semester hours of speech-language pathology technical course work; and

(2) Official transcripts showing 45 quarter hours or 30 semester hours of general education credit, and

(3) Written evidence of 100 clock contact hours of clinical interaction.

(a) Clinical interaction must be face to face interaction with clients and supervised 100% of the time. Activities may include speech and hearing screenings and individual or small group and classroom sessions over a recommended 8-12-week period.

(b) Tasks such as clerical tasks, passive observations, materials preparation and meetings with the supervisor may not be included in the 100 hours.

(c) Clinical interaction documentation must show the date, clinical activity, amount of time and the supervisor's initials and signature. A supervisor for clinical interaction must be licensed or have a permit to supervise assistants from this Board, or hold the ASHA Certificate of Clinical Competency.

(d) The supervising speech-language pathologist and the applicant will complete the Board's Competency Checklist upon completion of 100 hours. If there is more than one clinical interaction supervisor, each supervisor must complete and sign a Board Competency Checklist.

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(e) Applicants presenting transcripts showing practicum course(s) with the required number of clock contact hours of clinical interaction are not required to submit the completed Board Competency Checklist.

Stat. Auth.: ORS 681.360, 681.375, 681.420 & 681.460
Stat. Implemented: ORS 681.360 & 681.375
Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 1-2004, f. & cert. ef. 2-6-04; SPA 2-2004, f. & cert. ef. 5-26-04; SPA 3-2006, f. & cert. ef. 5-8-06; SPA 3-2008, f. & cert. ef. 4-10-08

335-095-0040

Qualifications for Supervising Speech-Language Pathology Assistants

(1) All supervision of services provided by a speech-language pathology assistant must be performed by a speech-language pathologist licensed under ORS Chapter 681 or hold a permit under OAR 335-095-0055.

(2) The supervising speech-language pathologist must have at least two years of professional speech-language pathology experience.

Stat. Auth.: ORS 681.360, 681.375, 681.420 & 681.460
Stat. Implemented: ORS 681.360 & 681.375
Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 3-2008, f. & cert. ef. 4-10-08

335-095-0050

Requirements for Supervising Licensed Speech-Language Pathology Assistants

(1) The amount and type of supervision required will be based on the skills and experience of the speech-language pathology assistant.

(a) For the first 90 days of licensed employment, a minimum of 30% of all the time an assistant is on the job must be supervised. A minimum of 20% of hours spent in clinical interaction must be *directly* supervised.

(b) Subsequent to the *first* 90 days of licensed employment, a minimum of 20% of all the time an assistant is on the job must be supervised. A minimum of 10% of hours spent in clinical interaction must be *directly* supervised.

(c) The supervising speech-language pathologist must be able to be reached throughout the work day. A temporary supervisor *may* be designated as necessary.

(d) If the supervising SLP is on extended leave, an interim supervising SLP who meets the requirements stated in 335-095-0040 must be assigned.

(e) The caseload of the supervising clinician must allow for administration, including assistant supervision, evaluation of students and meeting times. (All students assigned to an assistant are considered part of the caseload of the supervising clinician.)

(2) The supervising speech-language pathologist may not supervise more than the equivalent of two full-time speech-language pathology assistants.

(3) The supervising SLP must co-initial each clinical entry and sign each page of records.

(4) Supervision of speech-language pathology assistants must be documented.

(a) Documentation must include the following elements: date, activity, time spent, and direct or indirect supervision level and must be retained by the SLPA for four (4) years.

(c) Documentation must be available for audit requests from the Board.

Stat. Auth.: ORS 681.360, 681.370, 681.375, 681.420 & 681.460
Stat. Implemented: ORS 681.360, 681.370 & 681.375
Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07; SPA 3-2008, f. & cert. ef. 4-10-08

335-095-0055

Permit for Supervisors of Speech-language Pathology Assistants in Schools

A speech-language pathologist who does not hold a license under ORS Chapter 681 but instead holds either a basic, initial, standard, or continuing license in speech impaired issued by the Teacher Standards and Practices Commission, may supervise a speech-language pathology assistant working in a school setting if the following conditions are met:

(1) The speech-language pathologist meets the requirements of OAR 335-095-0040.

(2) The speech-language pathologist agrees to supervise according to OAR 335-095-0050.

(3) The speech-language pathologist completes an application prescribed by the Board and pays the required application fee on an annual basis. The permit is set to expire July 31st of each year.

Stat. Auth.: ORS 681.230, 681.360, 681.375, 681.420 & 681.460
Stat. Implemented: ORS 681.360 & 681.375
Hist.: SPA 1-2005, f. & cert. ef. 9-13-05; SPA 3-2006, f. & cert. ef. 5-8-06; SPA 3-2008, f. & cert. ef. 4-10-08

335-095-0060

Scope of Duties for the Speech-Language Pathology Assistant

(1) A speech-language pathology assistant may conduct the following tasks under supervision of the licensed Speech-Language Pathologist:

(a) Conduct speech and language screenings without interpretation, utilizing screening protocols specified by the supervising speech-language pathologist.

(b) Provide direct treatment assistance, excluding dysphasia (as opposed to feeding for nutritional purposes), to patients/clients identified by the supervising SLP by following written treatment plans or protocols developed by the supervising SLP.

(c) Document patient/client progress, without interpretation of findings, toward meeting established objectives as stated in the treatment plan, and report this information to the supervising speech-language pathologist.

(d) Assist the speech-language pathologist in collecting and tallying of data for assessment purposes, without interpretation.

(e) Act as second-language interpreters during assessments.

(f) Assist the speech-language pathologist with informal documentation during an intervention session (collecting and tallying data as directed by the speech-language pathologist), prepare materials, and assist with other clerical duties as specified by the supervising speech-language pathologist.

(g) Schedule activities and prepare charts, records, graphs, or other displays of data.

(h) Perform checks and maintenance of equipment.

(i) Participate with the speech-language pathologist in research projects, in-service training, and public relations programs.

(j) Initial each clinical entry and sign each page of records.

(2) The speech-language pathology assistant **may not** perform the following tasks:

(a) May not conduct swallowing screening, assessment, and intervention protocols, including modified barium swallow studies.

(b) May not administer standardized or non-standardized diagnostic tests, formal or informal evaluations, or interpret test results.

(c) May not participate in parent conferences, case conferences, or any interdisciplinary team without the presence of the supervising speech-language pathologist.

(d) May not write, develop, or modify a patient/client's treatment plan in any way.

(e) May not provide intervention for patients/clients without following the treatment plan prepared by the supervising speech-language pathologist.

(f) May not sign any formal documents (e.g. treatment plans, reimbursement forms, or reports.)

(g) May not select patients/clients for services.

(h) May not discharge patients/clients from services.

(i) May not disclose clinical or confidential information either orally or in writing to anyone not designated by the speech-language pathologist.

(j) May not make referral for additional service.

(k) May not communicate with the patient/client, family, or others regarding any aspect of the patient/client status or service without the specific consent of the supervising speech-language pathologist.

(l) May not represent him/herself as a speech-language pathologist.

(m) May not write a formal screening, diagnostic, or discharge report.

Stat. Auth.: ORS 681.360, 681.370, 681.375, 681.420 & 681.460

Stat. Implemented: ORS 681.370 & 681.375

Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07; SPA 3-2008, f. & cert. ef. 4-10-08

335-095-0065

Scope of Duties for the Educational Assistant

(1) A speech-language pathologist may assign the following tasks to an educational assistant:

(a) Non-instructional activities such as materials preparation.

(b) Clerical duties such as scheduling of appointments, maintenance of equipment and the set-up of materials for diagnostic and intervention sessions.

(2) A speech-language pathologist **may not assign the following tasks** to an educational assistant:

(a) May not assign the task of speech and language screenings.

(b) May not assign provision of direct treatment assistance. This does not mean to imply that carryover and practice activities are restricted to speech-language pathologists and speech-language pathology assistants.

(c) May not assign documentation of patient/client progress.

(d) May not assign the task of assisting the speech-language pathologist in collecting and tallying of data for assessment purposes.

ADMINISTRATIVE RULES

(e) May not assign the task of independently collecting formal or informal documentation toward speech/language intervention goals.

(f) May not assign the task of signing and recording initial treatment notes.

Stat. Auth.: ORS 681.360, 681.370, 681.375, 681.420 & 681.460

Stat. Implemented: ORS 681.360, 681.370 & 681.375

Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 3-2008, f. & cert. ef. 4-10-08

Board of Examiners of Licensed Dietitians Chapter 834

Rule Caption: Shifts the renewal late fee one month earlier.

Adm. Order No.: BELD 1-2008

Filed with Sec. of State: 4-9-2008

Certified to be Effective: 4-9-08

Notice Publication Date: 3-1-2008

Rules Amended: 834-010-0030

Subject: Creates a one-month period during which the licensee can complete the renewal process without endangering their continual employability.

Rules Coordinator: Doug Van Fleet—(503) 731-4085

834-010-0030

Issuance and Renewal of Licenses

An applicant may be issued a license based on compliance with requirements stated in ORS 691.405, et seq. and these rules. The Board may issue a license to any person who meets the requirements upon payment of the license fee prescribed:

(1) Licenses will expire on October 31 of odd numbered years, beginning in 1995.

(2) Licensee's renewal application must be postmarked or received in the Board Office during regular business hours on or before the expiration date in order to avoid the late renewal fee.

(3) Applicants for renewal of licenses must provide documentation of having met continuing education requirements by providing the Board a copy of current registration card or evidence of 30 hours per biennial licensure period of continuing education approved by the Board. Applicants who have completed the required hours of continuing education which are approved by the Commission of Dietetic Registration are deemed to have met the continuing education required by the Board.

(4) A renewed license shall be furnished to each licensee who meets all renewal requirements by the expiration date.

(5) No person without a current, valid license from the Board may use the title of or imply that he/she has the title of "licensed dietitian".

Stat. Auth.: ORS 691.405 - 691.535

Stats. Implemented:

Hist.: LDB 1-1990(Temp), f. 8-23-90, cert. ef. 9-4-90; LDB 2-1990, f. & cert. ef. 12-20-90; LDB 1-1992, f. & cert. ef. 3-13-92; LDB 2-1993, f. 11-30-93, cert. ef. 12-1-93; BELD 1-2005, f. 5-23-05, cert. ef. 7-22-05; BELD 1-2008, f. & cert. ef. 4-9-08

Board of Geologist Examiners Chapter 809

Rule Caption: Resubmit Rules filed March 17, 2006; official university transcripts must contain courses listed in this rule.

Adm. Order No.: BGE 1-2008

Filed with Sec. of State: 3-20-2008

Certified to be Effective: 3-20-08

Notice Publication Date: 2-1-2008

Rules Amended: 809-030-0025

Subject: This rule change was filed with the Secretary of State's office on 3/17/2006 and was subsequently received at the Legislative Counsel's Office on April 3, 2006, missing the required 10-day window. Per notification by the Board on December 13, 2007, this rule is being resubmitted to meet the 10-day window requirement of Legislative Counsel. The same rule changes submitted 3/17/2006 are present here.

This Rule change provides a list of the university coursework that should be included on official transcripts used to qualify applicants for the examination for registration. A minimum number of courses from this list must be posted on the official university transcript of the applicant.

Rules Coordinator: Susanna Knight—(503) 566-2837

809-030-0025

Qualifications for Geologist Fundamentals Examination and Certification as a Geologist-in-Training

(1) To qualify to take the geologist fundamentals examination, an applicant shall:

(a) Have an undergraduate degree in geology, geological sciences, or earth science from an accredited college or university; or

(b) Have completed the equivalent of 45 quarter hours.

(2) At least 80% of the qualifying 45 quarter hours presented must include upper division coursework from the following list or substitutions approved by the Board:

(a) Coastal processes;

(b) Economic geology;

(c) Engineering geology;

(d) Environmental geology;

(e) Geochemistry;

(f) Geology field camp;

(g) Geology field methods;

(h) Geomorphology;

(i) Geophysics;

(j) Glacial geology;

(k) Historical geology;

(l) Hydrogeology;

(m) Invertebrate paleontology;

(n) Lithology;

(o) Marine geology;

(p) Mineralogy;

(q) Paleopedology/ Paleosols;

(r) Petrography;

(s) Petroleum geology;

(t) Petrology;

(u) Planetology;

(v) Remote sensing;

(w) Rock mechanics;

(x) Sedimentology;

(y) Seismology;

(z) Stratigraphy;

(aa) Structural geology;

(bb) Tectonics;

(cc) Volcanology.

Stat. Auth.: ORS 183 & 672.505 - 672.919

Stats. Implemented: ORS 672.555

Hist.: GE 1-1984, f. & cert. ef. 2-1-84; GE 1-1985, f. & cert. ef. 7-1-85; GE 1-1990, f. & cert. ef. 10-2-90; BGE 1-2006, f. & cert. ef. 3-17-06; BGE 1-2008, f. & cert. ef. 3-20-08

Board of Naturopathic Examiners Chapter 850

Rule Caption: Updates the formulary compendium.

Adm. Order No.: BNE 2-2008

Filed with Sec. of State: 3-21-2008

Certified to be Effective: 3-21-08

Notice Publication Date: 1-1-2008

Rules Amended: 850-060-0225, 850-060-0226

Subject: The correction is necessary because the wrong text was inadvertently filed.

Rules Coordinator: Anne Walsh—(503) 731-4045

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;

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- (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) Aminosalicyclic 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) Bichloroacetic Acid*;
- (47) Bimatoprost Solution 0.03%;
- (48) Biologicals;
- (49) Biphosphonates;
- (50) Bromocriptine;
- (51) Budesonide;
- (52) Buprenorphine;
- (53) Butorphanol;
- (54) Cabergoline;
- (55) Calcipotriene;
- (56) Calcitonin;
- (57) Calcitriol;
- (58) Carbamide Peroxide;
- (59) Carbidopa;
- (60) Carbol-Fuchsine;
- (61) Captopril;
- (62) Cefaclor;
- (63) Cefdinir;
- (64) Cefibuten;
- (65) Cefadroxil;
- (66) Cefditoren;
- (67) Cefixime;
- (68) Cefonicid Sodium;
- (69) Cefpodoxime Proxetil;
- (70) Cefprozil;
- (71) Ceftributen;
- (72) Cefuroxime;
- (73) Celecoxib;
- (74) Cellulose Sodium Phosphate;
- (75) Cenestin;
- (76) Cephalixin;
- (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) Condylax;
- (92) Cortisone;
- (93) Coumadin;
- (94) Cromolyn Sodium;
- (95) Cyanocobalamin;
- (96) Cycloserine;
- (97) Danazol;
- (98) Deferoxamine/Desferroxamine (Board approved certification required before therapeutic IV chelation is allowed);
- (99) Demeclocycline Hydrochloride;
- (100) Desmopressin;
- (101) Desoxyribonuclease;
- (102) Dexamethasone;
- (103) Dextran;
- (104) Dextromethorphan;
- (105) Dextrose;
- (106) Dextrothyroxine;
- (107) Dicloxacillin;
- (108) Dihydroergotamine Migranal;
- (109) Didanosine;
- (110) Dimethyl Sulfone (DMSO);
- (111) Digitalis;
- (112) Digitoxin;
- (113) Digoxin;
- (114) Dinoprostone;
- (115) Diphylline;
- (116) Dirithromycin;
- (117) DMPS (Board approved certification required before therapeutic IV chelation is allowed);
- (118) DMSA;
- (119) Doxercalciferol;
- (120) Doxycycline;
- (121) Dronabinol;
- (122) Dyclonine;
- (123) EDTA (Board approved certification required before therapeutic IV chelation is allowed);
- (124) Electrolyte Solutions;
- (125) Emtricitabine;
- (126) Enalapril;
- (127) Ephedrine;
- (128) Epinephrine*;
- (129) Epinephrine (auto-inject);
- (130) Ergoloid Mesylates;
- (131) Ergonovine Maleate;
- (132) Ergotamine;
- (133) Erythromycins;
- (134) Erythropoietin;
- (135) Estradiol;
- (136) Estriol;
- (137) Estrogen-Progestin Combinations;
- (138) Estrogens, Conjugated;
- (139) Estrogen, Esterified;
- (140) Estrone;
- (141) Estropipate;
- (142) Eszopiclone;
- (143) Ethyl Chloride;
- (144) Etidronate;
- (145) Ezetimibe;
- (146) Famciclovir;
- (147) Fentanyl;
- (148) Fibrinolysin;
- (149) Flavoxate;
- (150) Fluconazole;
- (151) Fludrocortisone Acetate;
- (152) Flunisolide;
- (153) Fluorides;
- (154) Fluoroquinolones;

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- (155) Fluoroquinolones;
(155) Fluorouracil;
(157) Fluticasone propionate;
(158) Fluvastatin;
(159) Fosinopril;
(160) Gaba Analogs;
(161) Gabapentin;
(162) Galantamine H. Br.;
(163) Gamma-Hydroxy Butyrate;
(164) Ganciclovir;
(165) Gentamicin;
(166) Gentian Violet;
(167) Griseofulvin;
(168) Guaifenesin;
(169) Heparin - subcutaneous, sublingual and heparin locks;
(170) Hexachlorophene;
(171) Homatropine Hydrobromide*;
(172) Human Growth Hormone;
(173) Hyaluronic Acid;
(174) Hyaluronidase;
(175) Hydrocodone;
(176) Hydrocortisone;
(177) Hydrogen Peroxide;
(178) Hydromorphone;
(179) Hydroquinone;
(180) Hydroxychloroquine;
(181) Hydroxypolyethoxydodecane*;
(182) Hyoscyamine;
(183) Iloprost Inhalation Solution;
(184) Imiquimod Cream (5%);
(185) Immune Globulins*;
(186) Insulin;
(187) Interferon Alpha b w/Ribavirin;
(188) Iodine;
(189) Iodoquinol;
(190) Iron Preparations;
(191) Isosorbide Dinitrate;
(192) Isotretinoin;
(193) Itraconazole;
(194) Kanamycin Sulfate;
(195) Ketoconazole;
(196) Lactulose;
(197) Lamivudine;
(198) Letrozole;
(199) Leucovorin Calcium;
(200) Levalbuteral;
(201) Levocarnitine;
(202) Levodopa;
(203) Levonorgestrel;
(204) Levorphanol;
(205) Levothyroxine;
(206) Lincomycin;
(207) Lindane;
(208) Liothyronine;
(209) Liotrix;
(210) Lisinopril;
(211) Lisuride;
(212) Lithium;
(213) Lovastatin;
(214) Mebendazole;
(215) Meclizine;
(216) Medroxyprogesterone;
(217) Medrysone;
(218) Mefloquine;
(219) Megestrol Acetate;
(220) Mercury, Ammoniated;
(221) Mesalamine;
(222) Metformin;
(223) Methadone;
(224) Methimazole;
(225) Methoxsalen;
(226) Methscopolamine;
(227) Methylegonovine;
(228) Methylprednisolone;
(229) Methylsulfonylmethane (MSM);
(230) Methyltestosterone;
(231) Methysergide;
(232) Metronidazole;
(233) Miglitol;
(234) Minerals (Oral & Injectable);
(235) Minocycline;
(236) Misoprostol;
(237) Moexipril;
(238) Monobenzene;
(239) Morphine;
(240) Mupirocin;
(241) Nafarelin acetate;
(242) Naloxone;
(243) Naltrexone;
(244) Natamycin;
(245) Nateglinide;
(246) Nicotine;
(247) Nitroglycerin;
(248) Novobiocin;
(249) Nystatin;
(250) Olsalazine;
(251) Omeprazole;
(252) Opium;
(253) Over the Counter (OTC)
(254) Oxacillin;
(255) Oxamniquine;
(256) Oxaprozin;
(257) Oxtriphylline;
(258) Oxycodone;
(259) Oxygen;
(260) Oxymorphone;
(261) Oxytetracycline;
(262) Oxytocin*;
(263) Pancrelipase;
(264) Papain;
(265) Papavarine;
(266) Paramethasone;
(267) Paregoric;
(268) Penciclovir;
(269) Penicillamine (Board approved certification required before therapeutic IV chelation is allowed);
(270) Penicillin;
(271) Pentosan;
(272) Pentoxifylline;
(273) Pergolide;
(274) Perindopril;
(275) Permethrin;
(276) Phenazopyridine;
(277) Phenylalkylamine;
(278) Phenylephrine*;
(279) Physostigmine;
(280) Pilocarpine;
(281) Pimecrolimus Cream 1%;
(282) Piperazine Citrate;
(283) Podophyllum Resin;
(284) Polymyxin B Sulfate;
(285) Polysaccharide-Iron Complex;
(286) Potassium Iodide;
(287) Potassium Supplements;
(288) Pramoxine;
(289) Pravastatin;
(290) Prednisolone;
(291) Prednisone;
(292) Pregabalin;
(293) Progesterone;
(294) Progestins;
(295) Propionic Acids;
(296) Propylthiouracil;
(297) Prostaglandins;
(298) Proton Pump inhibitor;
(299) Pseudoephedrine;
(300) Pyrazinamide;
(301) Pyrethrins;
(302) Quinapril;
(303) Quinidine;

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- (304) Quinilones;
- (305) Quinine Sulfate;
- (306) Quinines;
- (307) Quinolines;
- (308) Ramopril;
- (309) Rauwolfia Alkaloids;
- (310) Rho(D) Immune globulins*;
- (311) Rifabutin;
- (312) Rifampin;
- (313) Risendronate;
- (314) Ranolazine;
- (315) Salicylamide;
- (316) Salicylate Salts;
- (317) Salicylic Acid;
- (318) Salsalate;
- (319) Scopolamine;
- (320) Selenium Sulfide;
- (321) Sildenafil Citrate;
- (322) Silver Nitrate;
- (323) Simvastatin;
- (324) Sitagliptin;
- (325) Sodium Polystyrene Sulfonate;
- (326) Sodium Thiosulfate;
- (327) Spirolactone;
- (328) Stavudine;
- (329) Spectinomycin;
- (330) Sucralfate;
- (331) Sulfasalazine;
- (332) Sulfonamide/Trimethoprim/Sulfones;
- (333) Tacrolimus;
- (334) Tazarotene topical gel;
- (335) Telithromycin;
- (336) Tenofovir;
- (337) Testosterone;
- (338) Tetracycline;
- (339) Theophylline;
- (340) Thiabendazole;
- (341) Thyroid;
- (342) Thyroxine;
- (343) Tiagabine;
- (344) Tibolone;
- (345) Tiludronate;
- (346) Tinidazole;
- (347) Tobramycin;
- (348) Topical steroids;
- (349) Tramadol;
- (350) Trandolapril;
- (351) Trazodone;
- (352) Tretinoin;
- (353) Triamcinolone;
- (354) Triamterene;
- (355) Trichloroacetic Acid*;
- (356) Trimetazidine;
- (357) Trioxsalen;
- (358) Triptans;
- (359) Troleandomycin;
- (360) Undecylenic Acid;
- (361) Urea;
- (362) Urised;
- (363) Ursodiol;
- (364) Valacyclovir;
- (365) Valproic Acid;
- (366) Vancomycin;
- (367) Verapamil;
- (368) Verdenafil HCL;
- (369) Vidarabine;
- (370) Vitamins (Oral & Injectable);
- (371) Yohimbine;
- (372) Zalcitabine;
- (373) Zidovudine;
- (374) Zolpidem;
- (375) 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*.
- (376) Vaccines:
 - (a) BCG*;
 - (b) Cholera*;
 - (c) Diphtheria*;
 - (d) DPT*;
 - (e) Haemophilus b Conjugate*;
 - (f) Hepatitis A Virus*;
 - (g) Hepatitis B*;
 - (h) Influenza Virus*;
 - (i) Japanese Encephalitis Virus*;
 - (j) Measles Virus*;
 - (k) Mumps Virus*;
 - (l) Pertussis*;
 - (m) Plague*;
 - (n) Pneumococcal*;
 - (o) Poliovirus Inactivated*;
 - (p) Poliovirus-Live Oral*;
 - (q) Rabies*;
 - (r) Rubella*;
 - (s) Smallpox*;
 - (t) Tetanus IG*;
 - (u) Tetanus Toxoid*;
 - (v) Typhoid*;
 - (w) Varicella*;
 - (x) Yellow Fever*;
- (377) Skin Tests:
 - (a) Diphtheria*;
 - (b) Mumps*;
 - (c) Tuberculin*.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 681.145

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

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) Amino Acids;
 - (a) Levocarnitine**;
- (2) Antiestrogens;
 - (a) Nafarelin Acetate;
 - (b) Tibolone;
- (3) Antigout;
 - (a) Colchicine;
 - (b) allopurinol;
- (4) Anti-infective Agents;
 - (a) Anthelmintics;
 - (A) Thiabendazole.
 - (B) Oxamniquine.
 - (C) Mebendazole.
 - (b) Antibacterials;
 - (A) Aminoglycosides**;
 - (i) Gentamicin;

ADMINISTRATIVE RULES

- (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) Quinolones**;
- (i) Fluoroquinolones;
- (ii) Quinolones — all;
- (G) Sulfonamides;
- (i) 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) Aminosalicilyc 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) Fanciclovir;
- (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;
- (5) Antineoplastic Agents;
- (a) Anastrozole;
- (b) Letrozole;
- (6) Anti-thyroid;
- (a) Thionamides;
- (A) Methimazole;
- (B) Propylthiouracil;
- (7) 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) Pseudoephedrine;
- (d) Sympatholytic;
- (A) Yohimbine;
- (e) Skeletal Muscle Relaxants;
- (A) Clostridium botulinum toxin (ab);
- (B) Baclofen;
- (f) Misc;
- (A) Nicotine;
- (8) Biologicals;
- (a) Cytokine;
- (A) Monoclonal antibodies;
- (b) Enzymes**;
- (A) Collagenase;
- (B) Desoxyribonuclease;
- (C) Fibrinolysin;
- (D) Hyaluronidase;
- (E) Pancrelipase;
- (F) Papain;
- (c) Hormones — see hormone;
- (d) Immune globulins — see anti-infective, misc;
- (e) Interferons — see antivirals;
- (f) Prostaglandins**;
- (A) Alprostadil;

ADMINISTRATIVE RULES

- (B) Bimatoprost;
- (C) Iloprost;
- (D) Dinoprostone;
- (E) Misoprostal;
- (g) Blood derivatives;
- (9) Blood Formation and Coagulation;
- (a) Coumadin;
- (b) Erythropoietin;
- (c) Heparin; subcutaneous, sublingual and heparin locks;
- (10) 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) Calcium Channel blockers;
- (A) Phenylalkylamine**;
- (i) Verapamil;
- (g) ACE inhibitors**;
- (A) Benazepril;
- (B) Captopril;
- (C) Enalapril;
- (D) Fosinopril;
- (E) Lisinopril;
- (F) Moexipril;
- (G) Perindopril;
- (H) Quinapril;
- (I) Ramopril;
- (J) Trandolapril;
- (11) Central Nervous System Agents;
- (a) Analgesics and Antipyretics;
- (A) NAIDS;
- (i) Amino Aspirins;
- (ii) Celecoxib;
- (iii) Mesalamine;
- (iv) Olsalazine;
- (v) Oxaprozin;
- (vi) Propionic Acid Derivatives**;
- (aa) Fenoprofen;
- (bb) Flurbiprofen;
- (cc) Ibuprofen;
- (dd) Ketoprofen;
- (ee) Oxaprozin;
- (ff) Naproxen;
- (vii) Salicylic 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) Gabapentin;
- (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**;
- (aa) Eszopiclone;
- (bb) Ranolazine;
- (cc) Sildenafil Citrate;
- (dd) Trimetazidine;
- (ee) Verdenafil HCL;
- (ii) Zolpidem;
- (B) Anti-Manic;
- (i) Lithium;
- (f) Misc;
- (A) Gamma-Hydroxy Butyrate;
- (B) Triptans**;
- (12) Diabetic;
- (a) Acarbose;
- (b) Insulin;
- (c) Metformin;
- (d) Miglitol;
- (e) Nateglinide;
- (13) 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;
- (14) Ergot Derivatives**;
- (a) Dihydroergotamine;
- (b) Ergoloid Mesylates;
- (c) Ergonovine Maleate;
- (d) Ergotamine;
- (15) EENT preparations;
- (a) Acetic Acid;
- (b) Ophthalmic Solution (0.03%);
- (c) Carbamide Peroxide;

ADMINISTRATIVE RULES

- (d) Natamycin;
- (e) Phenylephrine;
- (f) Prostaglandins — see Biologicals;
- (16) GI drugs;
- (a) Antidiarrhea — see opioids;
- (b) Cathartics and laxatives;
- (A) Lactulose;
- (c) Antiemetics;
- (A) Dronabinol;
- (d) Antiulcer and acid suppressants;
- (A) Misoprostol;
- (B) Proton Pump Inhibitors**;
- (i) Omeprazole;
- (C) Sucralfate;
- (e) Misc;
- (A) Citrate Salts;
- (B) Ursodiol;
- (17) Gold Compounds;
- (a) Auranofin;
- (18) 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;
- (19) 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;
- (20) Immunological;
- (a) Tacrolimus;
- (b) Rho(D) Immune globulins*;
- (21) 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*;
- (22) Prostaglandins — see Biologicals;
- (23) Skin and mucous membrane agents;
- (a) Anti-infectives;
- (A) Benzoic Acid;
- (B) Carbol-Fuchsin;
- (C) Cloquinol;
- (D) Hexachlorophene;
- (E) Iodoquinol;
- (F) Mercury, Ammoniated;
- (G) Mupirocin;
- (H) Selenium Sulfide;
- (I) Silver Nitrate;
- (J) Undecylenic Acid;
- (b) Anti-inflammatory;
- (A) 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) Bichloroacetic Acid;
- (D) Imiquimod Cream (5%);
- (E) Isotretinoin;
- (F) Podophyllum Resin;
- (G) Trichloroacetic 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;
- (24) Skin Tests**;
- (a) Diphtheria*;
- (b) Mumps*;
- (c) Tuberculin*;
- (25) Upper Respiratory;
- (a) Acetylcysteine;
- (b) Albuterol Sulfate;
- (c) Benzonatate;
- (d) Cromolyn Sodium;
- (e) Guaifenesin;
- (f) Levalbuteral;

ADMINISTRATIVE RULES

- (g) Nedocromil;
- (h) Xanthines**;
- (A) Aminophylline;
- (B) Diphylline;
- (C) Oxtriphylline;
- (D) Pentoxifylline;
- (E) Theophylline;
- (26) Vaccines**;
- (a) BCG*;
- (b) Cholera*;
- (c) Diphtheria*;
- (d) DPT*;
- (e) Haemophilus b Conjugate*;
- (f) Hepatitis A Virus*;
- (g) Hepatitis B*;
- (h) Influenza Virus*;
- (i) Japanese Encephalitis Virus*;
- (j) Measles Virus*;
- (k) Mumps Virus*;
- (l) Pertussis*;
- (m) Plague*;
- (n) Pneumococcal*;
- (o) Poliovirus — Inactivated*;
- (p) Poliovirus — Live Oral*;
- (q) Rabies*;
- (r) Rubella*;
- (s) Smallpox*;
- (t) Tetanus IG*;
- (u) Tetanus Toxoid*;
- (v) Typhoid*;
- (w) Varicella*;
- (x) Yellow Fever*;
- (27) Vitamins**;
- (a) Calcitonin;
- (b) Calcitriol;
- (c) Cyanocobalamin;
- (d) Doxercalciferol;
- (e) Leucovorin Calcium;
- (f) Vitamins (Oral & Injectable);
- (28) Misc;
- (a) Colchicine (gout);
- (b) Dimethyl Sulfone (DMSO);
- (c) Hyaluronic Acid;
- (d) Hydrogen Peroxide;
- (e) MSM;
- (f) OTC Substances;
- (g) Oxygen;
- (h) Sitagliptin;
- (i) Trazodone;
- (j) 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

Board of Parole and Post-Prison Supervision Chapter 255

Rule Caption: Clarification of the residency requirements for offenders released onto parole and post-prison supervision.

Adm. Order No.: PAR 2-2008

Filed with Sec. of State: 4-9-2008

Certified to be Effective: 4-9-08

Notice Publication Date: 2-1-2008

Rules Amended: 255-070-0003

Subject: The amendment of this rule is necessary to implement policy choices made in SB 2 and HB 2007 (2007).

Rules Coordinator: Peggy Barber—(503) 945-0914

255-070-0003

Offender Return to County of Residence

(1) Unless the Board waives the condition, the Board shall order as a condition of parole or post-prison supervision that an offender reside for the

first six months in the county where the offender resided at the time of the offense that resulted in the imprisonment.

(2)(a) The Board or the Department of Corrections may establish the county of residency by obtaining the last address of record at the time of the offense from all of the available information in the following records:

(A) An Oregon driver's license, regardless of its validity;

(B) The Department of Revenue;

(C) The Department of State Police, Bureau of Criminal Identification;

(D) The Department of Human Resources; or

(E) The Department of Corrections.

(b) If the records do not disclose the county of residency, the Board or the Department shall find the offender resided in the county where she or he committed the crime.

(c) If the offender is serving multiple sentences, the county of residence shall be determined according to the date of the last arrest resulting in a conviction.

(d) In determining the offender's county of residence for purposes of this rule, the Board may not consider offenses committed by the offender while the offender was incarcerated in a Department of Corrections facility.

(3) Upon motion of the Board, an offender, a victim, or a district attorney, the Board may waive the residency requirement after finding:

(a) The offender provided proof of a job with no set ending date in a county other than the established county of residence;

(b) The offender poses a significant danger to the victim;

(c) The victim or victim's family poses a significant danger to the offender residing in the county of residence.

(d) The offender has a spouse, registered domestic partnership, or biological or adoptive family, residing in other than the county of residence, who will be materially significant in aiding in the rehabilitation of the offender and in the success of the parole or post-prison supervision period;

(e) The Board requires that the offender participate in a treatment program which is not available in the county of residence;

(f) The offender desires release to another state or another state has a detainer; or

(g) Other good cause.

Stat. Auth.: ORS 144.270(5)

Stats. Implemented:

Hist.: PAR 4-1989, f. & ef. 11-1-89; PAR 6-1991, f. & cert. ef. 10-15-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 5-1999(Temp), f. & cert. ef. 9-15-99 thru 3-12-00; PAR 10-1999, f. & cert. ef. 11-15-99; PAR 1-2007, f. & cert. ef. 2-1-07; PAR 2-2008, f. & cert. ef. 4-9-08

Board of Psychologist Examiners Chapter 858

Rule Caption: Rule corrections and updates; addition of pain management continuing education.

Adm. Order No.: BPE 1-2008

Filed with Sec. of State: 3-26-2008

Certified to be Effective: 3-26-08

Notice Publication Date: 3-1-2008

Rules Amended: 858-010-0001, 858-010-0005, 858-010-0007, 858-010-0010, 858-010-0015, 858-010-0020, 858-010-0025, 858-010-0030, 858-010-0036, 858-010-0041, 858-010-0050, 858-010-0055, 858-010-0075, 858-020-0015, 858-020-0045, 858-020-0075, 858-030-0005, 858-040-0015, 858-040-0025, 858-040-0035, 858-040-0036, 858-040-0055, 858-040-0065, 858-040-0075, 858-040-0085, 858-040-0095, 858-050-0100, 858-050-0105, 858-050-0110, 858-050-0120, 858-050-0125, 858-050-0140, 858-050-0145, 858-050-0150

Subject: Incorporates new pain management continuing education requirement; changes the oral jurisprudence examination construct for licensure by moving from an oral exam format to a written format; exempts senior psychologists from ethics coursework requirement; requires five years licensure for National Registry holders; provides Board discretion to delay voting on the examination results of an examinee having a complaint under investigation until the complaint has been resolved; clarifies supervised work experience requirement; adds requirement for temporary permit holders with less than five years of licensure to consult with a Oregon licensed psychologist; deletes language referencing obsolete standards of professional conduct; requires contested case hearings be conducted by administrative law judge rather than hearings officer or member of

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the Board; removes requirement of home study and study group documentation to be appended to CE form; minor housekeeping items.

Rules Coordinator: Debra Orman—(503) 378-4154, ext. 21

858-010-0001

Definitions

The practice of psychology is defined to include:

(1) Supervision: overseeing a professional's work on the diagnosis or treatment of mental disorders;

(2) Consultation: conferring or giving expert advice on the diagnosis or treatment of mental disorders;

(3) Evaluation: assessing mental disorders or mental functioning, including administering, scoring, and interpreting tests of mental abilities or personality;

(4) Therapy: treating a mental disorder.

Stat. Auth.: ORS 675.010 - 675.150

Stats. Implemented: ORS 675.110

Hist.: BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08

858-010-0005

Board Duties and Procedure

(1) **Board Meetings.** The State Board of Psychologist Examiners shall meet as necessary at a time and place specified by the Board and at such other times and places as specified by the Chair of the Board, a majority of members of the Board or by the Governor. The Associated Press shall be notified of the time and place of all meetings.

(2) **Internal Organization.** At the last meeting in each fiscal year, the first order of business shall be organizational matters, including election of Board Chair and Vice-Chair and the assignment of standing responsibilities to Board members. The term of the Chair, Vice Chair or any standing assigned responsibility can be changed or terminated at any meeting where the proposal has been placed on the agenda and sent to the members one week in advance of the meeting, or by unanimous consent of the Board.

(3) **Chair and Vice Chair Responsibilities:**

(a) The Chair is authorized to take emergency action between Board meetings, subject to ratification by the Board. However, in the case of actions significant enough to normally require Board decisions, the Chair shall first attempt to get authorization for such decisions from the Board members through telephone or email communication. All emergency actions of any kind shall be noted in the agenda for the next meeting and shall become the first order of business at that next meeting;

(b) The Vice-Chair shall perform the duties of the Chair when the Chair is unable to do so.

(4) **Board Communications.** Only the Board Chair shall write other than routine or form letters in the name of the Board unless members are specifically authorized in a Board meeting to do so. The Board should approve in advance any correspondence that may materially affect Board policies and procedures. When a delay might render the Board's functioning ineffective, the Chair may be required to take immediate action that shall be reviewed at the next meeting of the Board.

(5) **Board Files.** All Board files shall be assembled in the Board's official office. The Board Administrator shall maintain the Board's files under the direction of the Chair. The Board Administrator shall maintain a master record of any files that are checked out of the Board office by Board members. The Board Administrator shall be notified whenever any Board file is transferred from the possession of one person to another, and shall so note in the Board's records. Individuals who have in their possession documents or files pertaining to Board affairs are responsible for their protection and privacy.

(6) **Minutes and Agendas:**

(a) The minutes of a meeting shall be distributed to all Board members at least one week in advance of the next meeting;

(b) The agenda shall be prepared by the Board Chair or Board Administrator and distributed to all Board members at least one week before each meeting. The agenda items shall include reports by the Board Administrator, the Chair and each Board member who has received a specific assignment at the previous meeting or has a report to make regarding standing assignments. If there is insufficient time to inform the Board Chair, the Board Administrator may make additional scheduling at the direct request of Board members. The Board may at its discretion, revise the agenda or limit it to a particular topic under special circumstances. Undiscussed reports may be added to the typed minutes of any meeting.

(7) The Attorney General's Model Rules of Procedure under the Administrative Procedure Act, printed and promulgated by the Attorney

General, effective January 1, 2008, shall be the rules of procedure before the Board under ORS 183.310 to 183.500.

Stat. Auth.: ORS 675.010 - 675.150

Stats. Implemented: ORS 675.110 & 675.130

Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 8, f. 12-5-74, ef. 12-25-74; PE 12, f. & ef. 3-5-76; PE 13, f. & ef. 9-15-76; PE 1-1979, f. & ef. 9-5-79; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & ef. 7-23-82; PE 1-1987(Temp), f. & ef. 3-6-87; PE 1-1988, f. & cert. ef. 7-25-88; PE 1-1991, f. & cert. ef. 4-3-91; PE 4-1993, f. & cert. ef. 7-19-93; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08

858-010-0007

Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of a permanent rule, the Board of Psychologist Examiners shall give notice of the proposed adoption, amendment, or repeal:

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

(2) By mailing a copy of the notice to persons on the Board's mailing list established pursuant to ORS 183.335(6);

(3) By mailing or emailing a copy of the notice to the following persons, organizations, or publications;

(a) Associated Press;

(b) All licensees of the Board;

(c) Oregon Psychological Association; and

(d) All applicants for licensure.

(4) Prior to the adoption, amendment, or repeal of any rule of the Board relating to continuing education, the Board shall additionally mail a copy of the notice to the State Board of Higher Education.

Stat. Auth.: ORS 675.010 - 675.150

Stats. Implemented: ORS 675.110

Hist.: PE 13, f. & ef. 9-15-76; PE 1-1990, f. & cert. ef. 2-16-90; PE 2-1991, f. 8-15-91, cert. ef. 8-16-91; PE 4-1993, f. & cert. ef. 7-19-93; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08

858-010-0010

Procedure for Licensure Applications

(1) Filing of Applications. All inquiries regarding application for licensure as a psychologist and psychologist associate must be directed to the Board's office. Upon receipt of an application for licensure, Board staff shall process the application and determine if the application is complete. An application is considered complete when the following have been received:

(a) Transcript(s);

(b) University Accreditation Form (non APA accredited schools only);

(c) Reference Forms;

(d) Educational Record in Psychology Form (non-APA accredited schools only);

(e) Social Security Number Authorization Form;

(f) National Written Examination score (if applicable);

(g) Verification of Licensure in other states (if applicable);

(h) Clarifying information requested by Board's office;

(i) Verification of ABPP status (if applicable);

(j) Fee.

(2) Review Procedure. When all application materials have been received, Board staff shall review the file and approve applicants who have received a doctoral degree in psychology from an APA-approved program after confirming a graduate level course in ethics. A Board member shall review the files of applicants graduating from regionally accredited colleges and universities. The reviewer shall either:

(a) Find the application acceptable;

(b) Find the application not acceptable; or

(c) Bring the application to the full Board for review and determination of disposition.

(3) The Board shall maintain an active file for two years from the date the application was received. A file shall be presumed inactive if correspondence from the Board is returned as "undeliverable." The Board retains the discretion to extend the application period.

(4) Reapplication. If a candidate's application for licensure has been denied for any reason, the Board will not review a second application from that person until at least one year has lapsed from the date of the previous denial. The Board may require documentation to satisfy deficiencies in the previous application.

(5) Applicant's Responsibility. It is the applicant's responsibility to provide complete and accurate information on the application, and to notify the Board immediately if the status of any information submitted on the application changes, including but not limited to: complaint; disciplinary actions; and civil, criminal, or ethical charges. Failure to do so may be

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grounds for denial of the application or revocation of the license, once issued.

Stat. Auth.: ORS 675.030
Stats. Implemented: ORS 675.030(1)(a)(b)(c)(d)(e)(2)
Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1992, f. & cert. ef. 1-16-92; PE 3-1992, f. & cert. ef. 7-14-92; PE 1-1996, f. & cert. ef. 6-25-96; PE 1-1997, f. & cert. ef. 6-17-97; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2008, f. & cert. ef. 3-26-08

858-010-0015

Licensing Requirements — Doctoral Degrees

(1) To meet the education requirement of ORS 675.030(1), an applicant must possess either:

(a) A doctoral degree in psychology from a program accredited by the American Psychological Association as of the date the degree was awarded; or

(b) A doctoral degree in psychology from a program at a college or university that is regionally accredited at the doctoral level by any one of the following regional accrediting associations: Northwest, North Central, Western, New England, Middle States or Southern, and

(c) A minimum of three academic years of full-time graduate study including at least one year which is in residence at the institution from which the degree is granted, or its equivalent. Residence requires interaction with psychology faculty and other matriculated psychology students; one year's residence or its equivalent are defined as follows:

(i) Thirty semester hours or 45 quarter hours; or

(ii) A minimum of 500 hours of student-faculty contact involving face-to-face individual or group educational meetings. Such educational meetings must include both faculty-student and student-student interaction, be conducted by the psychology faculty of the institution at least 90 percent of the time, be documented by the applicant and the institution, and relate substantially to the program components specified.

(2) The program under sections (1)(a) or (b) must be defined as follows:

(a) Organizational Structure. The organizational structure of the graduate program must be defined as follows:

(A) The program must be identified and labeled as a program in psychology;

(B) The program must stand as a recognized entity within the institution;

(C) There must be an authority and primary responsibility for the core and specialty areas, whether or not the program cuts across administrative lines;

(D) There must be a sequence of study planned by those responsible for the program to provide an appropriate, integrated experience covering the field;

(E) There must be a faculty and a person administratively responsible for the program;

(F) There must be a body of students selected on the basis of high ability and appropriate educational preparation.

(b) Curriculum. The curriculum of the program must require applicant's successful completion of the following:

(A) 40 semester hours (60 quarter hours) of graduate courses identified by title and course content as psychology, that may include clinical, counseling, industrial/ organizational and school psychology, excluding thesis and practica;

(B) An original dissertation that was psychological in nature;

(C) Three or more graduate semester hours (five or more graduate quarter hours) each in biological basis of behavior (including, but not limited to physiological psychology, comparative psychology, neuropsychology, psychopharmacology, sensation and perception, biological basis of development); cognitive-affective basis of behavior (including, but not limited to learning, thinking, motivation, emotion, cognitive development); social basis of behavior (including, but not limited to social psychology, organization theory, community psychology, social development); individual differences (including, but not limited to human development, personality theory, psychopathology);

(D) At least one graduate course each in research design and methodology; statistics and psychometrics; and scientific and professional ethics.

(3) Supervised Employment. A minimum of one year of the required supervised experience must be post-doctoral.

(4) Licensing by Certificate of Professional Qualification (CPQ). Effective January 31, 2002, if an applicant holds a valid Certificate of Professional Qualification (CPQ) issued by the Association of State and Provincial Psychology Board (ASPPB), the Board may issue a license if the applicant:

(a) Has a doctoral degree in psychology;

(b) Completes and submits an application for licensure;

(c) Requests ASPPB to send copies of the applicant's CPQ file directly to the Oregon Board;

(d) Successfully passes a board administered jurisprudence examination; and

(e) Pays required fees.

(5) Licensing for those credentialed by the National Register. Effective January 1, 2004, if an applicant holds a valid credential as a Health Service Provider in Psychology (HSPP) by the National Register in Psychology, the Board may issue a license if the applicant:

(a) Has a doctoral degree in psychology;

(b) Possesses and has maintained an active license as a psychologist in another state for at least five years;

(c) Completes and submits an application for licensure;

(d) Requests the National Register to send copies of the applicant's HSPP file directly to the Oregon Board;

(e) Successfully passes a board administered jurisprudence examination; and

(f) Pays required fees. Those possessing a valid HSPP credential are not required to fulfill the national written examination requirement.

(6) Licensing for Senior Psychologists. Effective January 1, 2004, the Board may issue a license if the applicant:

(a) Qualifies under the provisions of ORS 675.050(1)(e)(A);

(b) Completes and submits an application for licensure;

(c) Requests the state(s) in which the applicant is licensed to send copies of the applicant's licensure file directly to the Oregon Board;

(d) Successfully passes a board administered jurisprudence examination; and

(e) Pays required fees. Senior Psychologists are not required to fulfill the national written examination requirement or to complete coursework in scientific and professional ethics.

Stat. Auth.: ORS 675.030

Stats. Implemented: ORS 675.030(1)(b)(c)

Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1979, f. & ef. 9-5-79; PE 1-1989(Temp), f. & cert. ef. 2-24-89; PE 2-1989, f. & cert. ef. 5-24-89; PE 3-1989(Temp), f. & cert. ef. 9-7-89; PE 1-1990, f. & cert. ef. 2-16-90; PE 3-1992, f. & cert. ef. 7-14-92; PE 1-1993(Temp), f. & cert. ef. 2-12-93; PE 3-1993, f. & cert. ef. 4-13-93; PE 5-1993, f. & cert. ef. 10-6-93; PE 1-1995, f. & cert. ef. 2-16-95; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 1-2002(Temp), f. & cert. ef. 1-31-02 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08

858-010-0020

Process and Disposition of Application for License

(1) Following a decision as to disposition, Board staff shall send out letters notifying the applicant of the approval to proceed. If the application is found unacceptable, Board staff shall send the applicant a letter so stating and noting the deficiency.

(2) Investigatory Powers. The Board shall not be limited in its investigation of an applicant's qualifications for licensure to the information supplied in and pursuant to the licensure application form and may direct additional investigation with respect to an applicant's qualifications prior to deciding whether or not the applicant may proceed to take the national written or jurisprudence examination.

(3) Record of Complaints. Board staff shall review the Board's records of complaints and insert any reference to an applicant in the applicant's file. Board staff shall also make inquiry, if appropriate, of other state, national or foreign certification or licensure boards for material relevant to each applicant.

Stat. Auth.: ORS 675.040, 675.045 & 675.050

Stats. Implemented: ORS 675.040(1)(2)(3), 675.045(1)(2)(a)(b) & 675.050(1)(a)(b)(2)

Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 2-1989, f. & cert. ef. 5-24-89; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08

858-010-0025

Procedure for Written Examination

(1) National Written Examination for Doctoral Level Licensure. The Board shall utilize the national Examination for Professional Practice in Psychology (EPPP) developed by the Professional Examination Service (PES) for the Association of State and Provincial Psychology Boards (ASPPB) Applicants whose educational credentials and professional references have been accepted by the Board as meeting its requirements for licensure as a psychologist shall be eligible to take the EPPP. Approved applicants desiring to take the EPPP must submit a written request to the Board's office. The Board shall provide PES with a list of eligible candidates. Applicants will receive an application packet from PES with the instructions for making arrangements to sit for the computer administered EPPP. The applicant must complete the PES application form and submit it,

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along with the examination fees, directly to PES. Eligible applicants must comply with all instructions established by PES in scheduling and sitting for the computer administered EPPP. Scores on the computer administered EPPP will be reported directly to the Board and to the applicant by PES on a monthly basis. The passing score for the EPPP from April 1993 to April 2001 shall be 140 or 70 percent. Candidates who have taken the EPPP prior to April 20, 1990, must have passed the examination by achieving a score at or above the national mean of doctoral candidates taking the examination for the first time on that day. Candidates who have taken the EPPP prior to April 1993 must have passed the examination by achieving a score at or above the national mean of doctoral candidates taking the examination for the first time on that day or 75 percent, whichever is lower. For computer administered forms of the EPPP, the Board shall apply a scaled score of 500 as recommended by ASPPB for doctoral level applicants. Notice for request for special accommodations for verified disability or for English as a second language must be provided as required by 858-010-0030(1)(c).

(2) Re-examination. Any applicant who fails to make a passing grade on the national examination shall be allowed to take the examination a second time. If the examination is failed twice, the candidate must obtain special permission from the Board to take the examination. Requests for reexamination shall be reviewed and approved by the Board. The candidate must submit a written study plan for the Board to review and approve.

(3) Conduct During the Examination. The "Examination for the Professional Practice in Psychology" is the exclusive property of the Association of State and Provincial Psychology Boards. No part of the national examination may be copied or reproduced in part or whole by any means whatsoever. A candidate's participation in any irregularity occurring during the examination, such as giving or obtaining information or aid which is not authorized by the Oregon Board of Psychologist Examiners, such methods including, but not limited to, observation or subsequent statistical analysis, may result in termination of his/her participation, invalidation of the results or other appropriate action including denial of application and forfeiture of the examination fee.

Stat. Auth.: ORS 675.040 & 675.045

Stats. Implemented: ORS 675.040 & 675.045

Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1979, f. & ef. 9-5-79; PE 1-1980, f. & ef. 3-10-80; PE 1-1981(Temp), f. & ef. 12-9-81; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & ef. 7-23-82; PE 2-1989, f. & cert. ef. 5-24-89; PE 1-1990, f. & cert. ef. 2-16-90; PE 1-1991, f. & cert. ef. 4-3-91; PE 3-1993, f. & cert. ef. 4-13-93; PE 4-1993, f. & cert. ef. 7-19-93; PE 1-1995, f. & cert. ef. 2-16-95; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2008, f. & cert. ef. 3-26-08

858-010-0030

Procedures for Oregon Jurisprudence Examination

(1) Jurisprudence Examination for Licensure as a Psychologist.

(a) Candidates who have passed the national written examination for licensure and have completed a minimum of two years of approved supervised work experience shall be eligible to sit for the jurisprudence examination. An application for licensure must be complete as defined in OAR 858-010-0010 at least 60 days prior to the examination to be considered eligible. Board staff shall have discretion in extending the deadline for up to 5 business days.

(b) The purpose of the examination is to determine the competency of each candidate in applicable laws and regulations, including ethical principles.

(c) Special Accommodations. Notice for request for special accommodations for verified disability or for English as a second language must be made at the time the request to sit for the examination is made, or when the disability becomes known to the candidate. The request must include:

(A) Verified Disability: Written verification of disability from a qualified care provider (i.e. a person certified or licensed by the state to provide such services) detailing:

- (i) Nature, extent and duration of disability;
- (ii) Recommendation(s) for accommodation.

(B) English as a Second Language: Written request for reasonable accommodation detailing:

(i) Level of proficiency in English including, but not limited to, number of years speaking and/or writing English; list of all national written or jurisprudence examinations, academic coursework, and dissertation in English language;

(ii) History of special accommodations granted in similar testing circumstances, for example, interpreter or extra time granted in jurisprudence examination process in other licensing jurisdictions or degree granting institution;

(iii) Statement documenting extent that English will or will not be the language in which professional services are provided;

(iv) Other information to support request for special accommodation;

(v) Recommendation(s) for accommodation.

(2) Schedule of Jurisprudence Examinations. Examinations shall be given at least twice a year. A candidate must request in writing to sit for the examination. The Board shall approve candidates to sit for the examination during its regularly scheduled meeting held prior to the month of the examination or at least 60 days prior to the examination date, whichever occurs first. The candidate must pay the examination fee at the time the examination is requested. The supervisor's final written evaluation of the supervision must accompany the written request. The evaluation must describe the candidate's areas of proficiency and skills the candidate possesses, and a summary of the candidate's training and experience which have led to competence areas. The evaluation must document the number of hours that the candidate has completed under the supervision of a psychologist. It is the candidate's responsibility to provide the Board a complete summary of all training experiences that are intended to fulfill the supervisory work requirement. When the Board has determined that the application is in order, the candidate shall be approved to sit for the jurisprudence examination. Once a candidate has been approved to sit for the examination, the fee is not refundable. At least thirty days prior to the examination date, written notification shall be given to candidates who have been approved to take the examination. Written notification shall include time, date, and location of the examination and a copy of Oregon law and administrative rules regarding psychologist and psychologist associate licensure. Appearances at the scheduled examination shall constitute a waiver of the prior written notice.

(3) Jurisprudence Examination Scoring and Result Procedures. Candidates shall be assigned a number so test scorers do not know the identity of the test taker until the examination report is prepared for the Board. The Board shall determine the passing score. Candidate names and scores shall be submitted to the Board for confirmation of the examination results and to vote on new licensees at their next scheduled meeting or within 30 days, whichever occurs first. Board staff shall notify each candidate in writing regarding the result of the examination. If an examinee has a pending complaint under investigation, the Board may, in its discretion, delay voting on the licensure of that examinee until the complaint has been resolved.

(4) Content of the Jurisprudence Examination. The examination shall be designed to measure the examinee's knowledge and application of federal, state and local laws and regulations related to the professional practice of psychology, including professional ethical principles incorporated by Board statute and rule.

(5) Administration of the Jurisprudence Examination.

(a) The Board, on its own motion or upon the recommendation of its delegates, shall determine the questions on which applicants may be examined.

(b) The Board, or its delegates, shall compile a candidate handbook that includes a copy of the Board's examination rules and an explanation of Board requirements related to scheduling and the conduct of the examination. The handbook shall be reviewed annually and may be revised, as deemed appropriate, and shall be provided to each applicant for examination at least thirty days prior to the examination.

(6) Reconsideration, Review and Reexamination.

(a) Reconsideration/Rescoring. Within thirty days after notice of the examination results, an applicant who does not pass the examination may petition the Board in writing to have their examination rescored.

(b) Review. An applicant who does not pass the examination may review their examination record at the Board's office within a period of ninety days following the date of the examination and upon written request to the Board. The purpose of the review is to assist the applicant prepare to retake the examination. To maintain test security, the applicant shall sign a confidentiality agreement. No more than one inspection shall be allowed.

(c) Reexamination. An applicant who does not pass the examination may be reexamined. If an applicant does not pass the second examination and wishes to take a third examination the applicant must submit a study plan prior to being approved for the third examination. If a candidate fails to pass the third examination, the candidate's application for licensure shall be denied. The Board's decision shall be final.

(7) Disqualification. A candidate sitting for the jurisprudence examination may be disqualified during or after the examination for conduct which affects the integrity of the candidate's performance or the examination including, but not limited to, giving or receiving aid, directly or indirectly, during the examination process, receiving the examination, or removing or attempting to remove any examination related information from the premises. Disqualification shall invalidate the examination, result in forfeiture of the examination fee and denial of the application.

Stat. Auth.: ORS 675.030, 675.040, 675.045, 675.050 & 675.065

Stats. Implemented: ORS 675.030, 675.040, 675.045, 675.050 & 675.065

ADMINISTRATIVE RULES

Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1979, f. & ef. 9-5-79; PE 1-1981(Temp), f. & ef. 12-9-81; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & ef. 7-23-82; PE 1-1985(Temp), f. & ef. 12-20-85; PE 1-1986, f. & ef. 7-1-86; PE 1-1988, f. & cert. ef. 7-25-88; PE 3-1988(Temp), f. & cert. ef. 11-30-88; PE 1-1990, f. & cert. ef. 2-16-90; PE 1-1991, f. & cert. ef. 4-3-91; PE 2-1991, f. 8-15-91, cert. ef. 8-16-91; PE 3-1992(Temp), f. & cert. ef. 12-10-91; PE 1-1992, f. & cert. ef. 1-16-92; PE 3-1992, f. & cert. ef. 7-14-92; PE 1-1995, f. & cert. ef. 2-16-95; PE 1-1996, f. & cert. ef. 6-25-96; PE 1-1997, f. & cert. ef. 6-17-97; BPE 1-2000(Temp), f. 3-8-00, cert. ef. 3-8-00 thru 9-4-00; BPE 3-2000, f. & cert. ef. 9-7-00; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 4-2002, f. & cert. ef. 10-11-02; BPE 1-2004(Temp), f. & cert. ef. 3-2-04 thru 8-29-04; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2006, f. 8-29-06, cert. ef. 9-1-06; BPE 1-2008, f. & cert. ef. 3-26-08

858-010-0036

Guidelines for Supervised Employment

(1) The following guidelines shall be used by the Board to define supervised employment in accordance with ORS 675.030(2). The supervision must be under the direction of a psychologist who, prior to such supervision, has been licensed in Oregon for at least two years, or under a psychologist licensed in another state with standards comparable to those in Oregon. The supervisor must provide in writing to the Board at the termination of the candidate's program a summary of the supervision and an evaluation of the candidate's progress in advancing toward licensure. The evaluation must include a summary of the candidate's psychological activities and an assessment of the candidate's performance across each activity area. The supervisor must document the number of hours of supervision. While obtaining the requisite two years of supervised experience, the candidate must be:

(a) A psychologist resident working under the supervision of a licensed psychologist;

(b) In a formal supervised experience in another state, which supervised experience is provided by a licensed psychologist; or

(c) An employee of an institution or agency exempt from licensure under ORS 675.090 (1)(e), and which institution or agency provides supervised experience by a licensed psychologist. Effective April 1, 2008, these employees are not required to enter into a formal Board resident contract to accumulate supervised work experience, as defined in (3) of this rule.

(2) One year of supervised experience is defined as 1,500 hours of psychological work performed over a period of not less than twelve months. The Board may approve a year of pre-doctoral supervised experience if such experience was a formal requirement of the candidate's doctoral program.

(3) Supervision obtained in Oregon pursuant to subsection (1)(a) of this rule must be under a resident contract on the form provided by the Board between supervisor and supervisee and approved in writing by the Board. Such resident status shall commence upon the date of Board approval. The Board may not approve a resident contract until the candidate's application has been approved. No one may purport to be a psychologist resident until the resident contract is approved. Termination of a residency contract may be granted by the Board at the request of the supervisor or supervisee. Such termination shall be effective at the time the Board reviews the request and takes formal action. If the supervisor is to be paid for supervision by the supervisee, such payment must be in the form of a per-hour fee. Supervision of more than two residents concurrently shall require prior approval.

(4) The psychologist resident must be supervised as follows:

(a) Title. The psychologist resident must be designated at all times by the title "psychologist resident." All signed materials, letterheads, business cards, telephone directory listings, brochures, insurance billings and any other public or private representation must include the individual's title as "psychologist resident" and the supervisor's name and designation as "supervisor;"

(b) Scope of Practice. The psychologist resident must offer services only in those areas that the psychologist resident's supervisor is competent;

(c) Frequency and Nature of Supervision. Supervision must entail frequent and regular meetings throughout the duration of the psychologist resident contract. Supervision must include a periodic review of all cases and psychological activities in which the psychologist resident is engaged. Supervision must consist of two hours per week, one of which must be individual, for every 40 hours worked. The ratio is 1:20 with a minimum of 1 hour per week. It is the responsibility of the supervisor and the psychologist resident to insure that the psychologist resident's practice complies with the laws, administrative rules and ethical standards applicable to psychologists and psychologist residents;

(d) Duration of Psychologist Resident Status. Psychologist resident status is a transitional step toward licensure and is not intended as a means of avoiding licensure. A psychologist resident contract shall be effective for

a period specified therein, not to exceed three years. The Board, in its discretion, may extend the contract beyond three years;

(e) Representation to the Client. The psychologist resident must advise the client orally and in writing that the supervisor will have access to all information and material relevant to the client's case and must meet all state and federal guidelines for client confidentiality;

(f) Psychologist Resident Evaluation of Supervision. At the conclusion of the psychologist resident contract, the psychologist resident must provide to the Board and the supervisor a written evaluation of the supervisor's performance.

(5) Responsibilities of the Supervisor. The supervisor must:

(a) Closely review, supervise and evaluate representative and problem cases with attention to diagnostic evaluation, treatment planning, ongoing case management, emergency intervention, recordkeeping and termination;

(b) Countersign any and all psychological reports and professional correspondence produced by the psychologist resident;

(c) Review with the psychologist resident Oregon laws and administrative rules related to the practice of psychology, ethical principles of psychologist, professional relationships and referrals, protection of records, billing practices, recordkeeping and report writing;

(d) Assist the psychologist resident in developing a continuing education plan;

(e) At the conclusion of the psychologist resident contract, provide to the Board and the psychologist resident a written evaluation of the supervision;

(f) Promptly communicate to the Board any interruption or proposed termination of the psychologist resident contract greater than one month;

(g) Keep notes of each supervisory session, and provide them to the Board upon request;

(h) Maintain and certify a record of hours of supervision on a form prepared by the Board, to be submitted with the supervisor's letter of evaluation; and

(i) Write a letter to the Board outlining plans to address the resident's problem areas, within two months of Board notification to the supervisor of the resident's failure of jurisprudence examination.

(6) Associate Supervisor. Any supervision of the psychologist resident by a person other than the primary supervisor may be provided as approved in advance by the Board and must be incorporated into the psychologist resident contract.

Stat. Auth.: ORS 675.030, 675.040, 675.045, 675.050, 675.065 & 675.110

Stats. Implemented: ORS 675.030, 675.040, 675.045, 675.050, 675.065, 675.110

Hist.: PE 1-1988, f. & cert. ef. 7-25-88; PE 1-1990, f. & cert. ef. 2-16-90; PE 1-1991, f. & cert. ef. 4-3-91; PE 2-1991, f. 8-15-91, cert. ef. 8-16-91; PE 4-1993, f. & cert. ef. 7-19-93; PE 1-1996, f. & cert. ef. 6-25-96; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 4-2002, f. & cert. ef. 10-11-02; BPE 1-2008, f. & cert. ef. 3-26-08

858-010-0041

License Renewals

(1) Before the Board will issue a license or approve a request for inactive status, licensee must submit:

(a) A signed renewal application that includes licensee's current mailing address, phone number, and the license number issued by the Board of Psychologist Examiners;

(b) A request for approval of a change in license status, if requested;

(c) A satisfactory continuing education report, if it is the licensee's reporting year; and

(d) Payment of the correct fee amount and any delinquent renewal fees.

(2) A renewal request and fee must be postmarked by December 31 of the year in which the licensure period ends. Burden of proof of mailing is on the licensee.

(3) A delinquent license renewal fee must be paid for licenses renewed after January 1 but before February 1 immediately following the due date defined in section (2). The Board shall have discretion to waive this fee for licensees on inactive status, or licensees with documented hardship cases.

(4) If license renewal fees are not paid within the time prescribed in this rule, the license shall lapse.

(5) To renew a license that has lapsed for nonpayment of the renewal fee, an individual must:

(a) Submit a completed application for reinstatement and pay the reinstatement fee, to be postmarked by the last day in the month of February immediately following the due date defined in section (2); and

(b) Attest that the individual has not engaged in the unlicensed practice of psychology.

(c) The Board shall have authority, at its discretion, to waive in whole or part the requirements of Section 5 in documented hardship cases.

ADMINISTRATIVE RULES

(6) Failure to receive a courtesy license renewal reminder from the Board shall not relieve a licensee of renewal requirements and consequences.

Stat. Auth.: ORS 675.010 - 675.150
Stats. Implemented: ORS 675.110
Hist.: BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08

858-010-0050 Inactive Status

Persons holding valid Oregon licenses who have made written request to the Board and have demonstrated to the Board's satisfaction that they are not and will not engage in active practice in Oregon may be granted inactive status. Violation of claimed inactive status shall be considered sufficient grounds for revocation of licensure by the Board:

(1) To reactivate a license from inactive status the licensee shall formally notify the Board of that intent in writing and report the licensee's professional and continuing education activities in accordance with OAR 858-040-0085 since the inactive license was granted:

(a) If notification of intent to reactivate a licensee from inactive status occurs within five years of granting that status the Board may, at its discretion, reactivate the license status upon receipt of that notice of intent;

(b) If the Board concludes that since the granting of the status the inactive licensee has not engaged in professional and continuing education activities that would maintain a satisfactory level of current professional competence, or if notification of intent to reactivate the license with inactive status is not received within five years of the granting of that status, reactivation of the license from inactive status shall depend upon successfully passing a jurisprudence examination before the Board. The content of that examination shall be the same as described in OAR 858-010-0030(2);

(c) In the case of a licensee who does not successfully pass the jurisprudence examination, the Board can require the submission of a study plan designed to correct deficiencies in the licensee's examination performance and/or require that the licensee establish a Board approved supervised employment relationship as described in OAR 858-010-0036, the minimum and maximum duration of which may be specified by the Board. In no case shall an inactive licensee function in supervised employment relationships for more than one year;

(d) The Board may reactivate the license from inactive status upon receipt of documentation that the proposed study plan and/or period of supervised employment has been successfully completed and the deficiencies in preparation rectified, or at its discretion, may require the successful passing of a jurisprudence examination as described in OAR 858-010-0030(2).

(2) The requirements for psychologist associates shall be the same as for psychologists.

Stat. Auth.: ORS 675.110
Stats. Implemented: ORS 675.110
Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1979, f. & ef. 9-5-79; PE 3-1980, f. & ef. 12-12-80; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & ef. 7-23-82; PE 2-1988, f. & cert. ef. 10-7-88; PE 1-1990, f. & cert. ef. 2-16-90; PE 1-1992, f. & cert. ef. 1-16-92; PE 3-1992, f. & cert. ef. 7-14-92; PE 3-1993, f. & cert. ef. 4-13-93; Renumbered to 858-040-0010; PE 1-1996, f. & cert. ef. 6-25-96; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08

858-010-0055 Limited Permits

(1) The Board may grant a limited permit to practice psychology in the State of Oregon to individuals actively licensed in another jurisdiction. Such permits may be issued for a period not to exceed 180 calendar days, and expire no later than 6 months after the date the permit is granted. Individuals shall make written request to the Board, and:

(a) Submit an Application for a Limited Permit, and proof of licensure in other jurisdictions;

(b) Pay the limited permit fee set by the Board;

(c) Submit a notarized statement certifying that the applicant has read and understands Oregon laws relating to the practice of psychology; and avails himself/herself to the laws of Oregon.

(2) Limited Permit Types.

(a) Visitor's Permit. A visitor's permit may be issued to psychologists that do not intend to seek full licensure in Oregon, and are providing psychological services for a limited, time-specific period only. A statement of work must be submitted with the application with a complete description of the work to be performed, including location of the activity, the specific dates of the activity, and the names of the parties requesting the activity to the extent permissible under confidentiality laws.

(b) Temporary Permit. The Board may grant a temporary permit to an applicant for full licensure in Oregon who possesses and has maintained an

active license as a psychologist in another state that is in good standing. Those applying for a temporary permit that do not have a minimum of five years of licensure in another state must consult with an Oregon licensed psychologist at least one hour per week on matters pertaining to Oregon laws. The consultant must agree and be named on the application for a temporary permit prior to approval of the permit. Applicants who are granted a temporary permit must take the first jurisprudence examination for which they would be eligible to sit. Failure to pass the jurisprudence examination shall result in cancellation of the temporary permit. The Board has discretion to extend the temporary permit cancellation date for an additional 30 days in order to allow the applicant time to transition clients to another provider. Applicants whose temporary permit is cancelled may submit a resident supervision contract for approval to continue providing services after the cancellation date.

Stat. Auth.: ORS 675.063
Stats. Implemented: ORS 675.063
Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 2-1989, f. & cert. ef. 5-24-89; PE 1-1990, f. & cert. ef. 2-16-90; PE 3-1992, f. & cert. ef. 7-14-92; PE 1-1995, f. & cert. ef. 2-16-95; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-1999(Temp), f. & cert. ef. 3-2-99 thru 7-1-99; BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08

858-010-0075 Code of Professional Conduct

The Board adopts for the code of professional conduct of psychologists in Oregon the American Psychological Association's "Ethical Principles of Psychologists and Code of Conduct" effective June 1, 2002.

[Publications referenced are available at <http://www.apa.org/ethics/>. The 1992 APA "Ethical Principles of Psychologists and Code of Conduct" is also available from the agency.]
Stat. Auth.: ORS 675.030, 675.040, 675.045, 675.050, 675.065 & 675.110
Stats. Implemented: ORS 675.030, 675.040, 675.045, 675.050, 675.065 & 675.110
Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & ef. 7-23-82; PE 4-1989(Temp), f. & cert. ef. 11-28-89; PE 1-1990, f. & cert. ef. 2-16-90; PE 3-1992, f. & cert. ef. 7-14-92; PE 5-1993, f. & cert. ef. 10-5-93; PE 1-1996, f. & cert. ef. 6-25-96; PE 1-1997, f. & cert. ef. 6-17-97; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 3-2002(Temp), f. & cert. ef. 4-15-02 thru 10-12-02; BPE 4-2002, f. & cert. ef. 10-11-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08

858-020-0015 Management of Complaints

(1) The Board Chair may appoint a Consumer Protection Committee that shall provide direction and consultation to the Board's investigator assigned to investigate complaints under ORS 676.160 to 676.180.

(2) Any Board member who has a conflict of interest with respect to any complaint shall declare the conflict and shall not participate in the investigation, disposition, or any other activity concerning the complaint.

Stat. Auth.: ORS 675.020 & 675.110
Stats. Implemented: ORS 675.110(8)
Hist.: BPE 2-1999, f. & cert. ef. 7-16-99; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08

858-020-0045 Notice and Investigation Process

(1) Notice to Respondent. The Board's Administrator shall notify the respondent by letter when a complaint is filed in its office. The letter shall state that a complaint has been filed; that an investigator will proceed in an investigation; and any general information regarding the scope of the investigation as allowed by ORS 676.160 to 676.180. The Board Administrator may delegate this notification procedure to the Board's investigator.

(2) Notice to Supervisors. When a complaint is filed against a person acting under the supervision of a licensed psychologist, the supervisor shall be notified that any investigation with respect to the conduct of the supervisee also may affect the licensure of the supervisor.

(3) Purpose of Investigation. The purpose of the investigation shall be to determine whether sufficient credible evidence exists of violation of rules or laws administered by the Board to justify issuance of a Notice of Intent to Impose sanctions against a person licensed by the Board or such other action as the circumstances may warrant.

(4) Duties of the Consumer Protection Committee. The Consumer Protection Committee shall:

(a) Advise the person or persons assigned to each investigation;

(b) Make recommendations to the Board when necessary.

(5) Summary of Allegations.

(a) Unless the report recommends dismissal of the complaint, the investigator shall notify the respondent of the specific allegations of the complaint by certified letter prior to submission of an investigation report to the Board for its consideration. The letter shall require a response from the respondent within 30 days from the date of mailing and provide warning that failure to respond may result in Board disposition of the complaint without the response.

ADMINISTRATIVE RULES

(b) If the assigned investigator is not a Board Member, the Summary of Allegations shall be approved by the Consumer Protection Committee before being served upon the respondent.

Stat. Auth.: ORS 675.020 & 675.110
Stats. Implemented: ORS 675.110
Hist.: BPE 3-1999, f. & cert. ef. 7-6-99; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08

858-020-0075

Contested Case Hearings

(1) When the Board institutes disciplinary actions, notice of proposed actions must be served on the respondent(s) or the respondent's legal counsel by certified mail, return receipt.

(2) The notice shall comply with ORS 183.413 to 183.497, and shall state that the respondent has the right to request a contested case hearing by filing an answer to the notice of disciplinary action and written request for hearing within 30 days of the mailing of the notice.

(3) Failure to request a hearing within 30 days of the mailing of the notice of disciplinary action shall be deemed a default and a final order shall be issued by the Board.

(4) A Contested Case hearing will be conducted by an impartial Administrative Law Judge who has not been involved in the initial investigation of the complaint, in accordance with ORS 183.310-183.550 and the Board's Notice of Rights and Procedures.

(5) Only the Board may order testimony be taken by deposition.

(6) All hearings shall be conducted in Salem, Oregon, unless a different location is stipulated to by all parties and approved by the Board.

Stat. Auth.: ORS 183.425(1), 183.425(2) & 675.110
Stats. Implemented: ORS 183.425(1), 183.425(2) & 675.110
Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 1-2008, f. & cert. ef. 3-26-08

858-030-0005

Application, Examination and Licensing Fees

(1) Application and Examination Fees:

(a) The application fee for licensure as a psychologist or psychologist associate shall be \$300.

(b) The fee for the Oregon jurisprudence examination shall be \$150.

(2) Renewal Fees:

(a) The license renewal fee for a psychologist and psychologist associate shall be calculated on an annual base amount of \$255 and be billed on a biannual basis of \$510.

(b) The license renewal fee for persons granted inactive status shall be \$25; and be billed on a biannual basis of \$50.

(c) The Board shall impose a delinquent license fee of \$200 for licenses renewed after January 1 but before February 1 of the first calendar year in the renewal period. The Board shall have discretion to waive the delinquency fee in hardship cases.

(3) Limited Permit Fee. The fee for a limited permit to practice in the state shall be \$100.

(4) Miscellaneous Fees. Materials and services are available to the public and licensees through the Board and may be purchased in accordance with ORS 192.440(2). The Board shall charge reasonable and actual costs for the following activities:

(a) Verification of Licensure — \$5.00 each written request;

(b) Transfer of Application/Licensure Information — \$20;

(c) Deferment Requests — \$10;

(d) Duplicating requests, including copying and mailing — \$2.50 for the first five copies; \$.25 for each copy thereafter;

(e) Laws and Administrative Rules — \$5;

(f) Computer diskette or email list of licensees — \$35;

(g) Application packet, including laws and administrative rules — \$30.00;

(h) Duplicate wall display certificate of licensure — \$12.00; and

(i) Cumulative disciplinary report — \$7.50.

Stat. Auth.: ORS 675.110 & 675.115
Stats. Implemented: ORS 675.110 & 675.115
Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 7, f. 10-21-74, ef. 11-11-74; PE 9, f. 2-3-75, ef. 2-25-75; PE 1-1978, f. & ef. 9-5-78; PE 1-1979, f. & ef. 9-5-79; PE 2-1980, f. & ef. 9-23-80; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & ef. 7-23-82; PE 1-1983, f. & ef. 11-1-83; PE 2-1989, f. & cert. ef. 5-24-89; PE 3-1992, f. & cert. ef. 7-14-92; PE 2-1993(Temp), f. & cert. ef. 3-18-93; PE 4-1993, f. & cert. ef. 7-19-93; Renumbered from 858-010-0060; PE 5-1993, f. & cert. ef. 10-6-93; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-1999(Temp), f. & cert. ef. 3-2-99 thru 7-1-99; BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2000, f. 9-7-00, cert. ef. 10-15-00; BPE 2-2001(Temp), f. 8-31-01, cet. ef. 10-12-01 thru 2-27-02; BPE 3-2001(Temp), f. & cert. ef. 10-12-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08

858-040-0015

Basic Requirements

(1) A licensee must earn at least 50 continuing education credits during two consecutive calendar years. Continuing education credit must be reported as follows:

(a) Licensees with even-numbered licenses must submit continuing education credit on or before December 31 of each even-numbered calendar year; and

(b) Licensees with odd-numbered licenses must submit continuing education credit on or before December 31 of each odd-numbered year.

(2) No continuing education report is required for licensees licensed less than one full calendar year on their first reporting year date. Licensees licensed less than two full calendar years on the reporting date must submit 25 hours of continuing education with a minimum of four hours in ethics.

(3) To be eligible for credit, hours must be completed during the two-year period immediately preceding the renewal date.

(4) All active licensees must complete a minimum of four hours of continuing education dedicated to the topic of the professional ethics of licensed psychologists in each reporting period.

(5) All active licensees must complete a minimum of seven hours of continuing education dedicated to the topic of pain management.

(a) One of the seven hours must be a course specific to Oregon provided by the Pain Management Commission of the Department of Human Services.

(b) The pain management requirements must be completed:

(A) Within 24 months of January 2, 2006; or

(B) Within 24 months of the first license renewal after January 2, 2006.

(6) No continuing education report is required for licensees requesting approval of change from active to inactive status. A licensee seeking inactive status may file a continuing education report with the Board.

(7) The Board may grant exemptions in whole or part from continuing education requirements, including extension of deadlines, in documented hardship cases.

Stat. Auth.: ORS 675.110

Stats. Implemented: ORS 675.110(14)

Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08

858-040-0025

Controls and Reporting Information on Continuing Education (CE) Form

(1) Before a license will be renewed under ORS 675.110 in the licensee's reporting year, a licensee must file an acceptable CE report including a signed statement attesting to the truth and accuracy of the CE report on a form prescribed by the Board.

(a) A copy of the CE form is available on the Board's website at www.obpe.state.or.us.

(b) An e-mail copy of the form may be obtained by e-mailing a request for the form to the Board's email address at oregon.bpe@state.or.us.

(c) A paper copy of the form may be obtained by sending a stamped, self-addressed envelope to the Board's office with a request for the form.

(2) Certification Page. The signed certification page must list the number of credits claimed by program code, and must indicate the total number of credits claimed. Ethics credits must be listed only in the "E" code section, not in Q, C, H, S, L, P, or PM code sections on the certification page.

(3) Detail Pages. To obtain credit, the following information pertaining to the continuing education program must be provided in legible form on the detail pages of the CE reporting form:

(a) Title of programs in chronological order with brief description of content if title does not indicate content. For multi-day programs, titles of separate sessions attended (with required information specified in (b) through (f) below) must appear on the CE form;.

(b) Dates attended, including month, day, and year;

(c) School, clinic, or organization conducting the program (the "Sponsor");

(d) Full name and degree of qualified instructor;

(e) Program Codes. [See 858-040-0035(4)] Detail pages listing programs for which ethics credit must have two code designations for each program for which ethics credit is claimed: E plus the program code Q, C, H, S, L, P, PM.

(f) Hours claimed: See 858-040-0055.

(g) To obtain credit for writing published articles and books, the following information must be provided on the CE form:

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- (A) Publisher;
- (B) Title of publication;
- (C) Brief description of content;
- (D) Dates of publication; and
- (E) Program code: See 858-040-0035(4)
- (F) Hours claimed: See 858-040-0055.

(4) Certificates of completion should not be sent to the Board with the CE report, but must be retained by licensee for two years after the reporting period.

(5) CE reports may be either mailed or faxed to the Board's Salem office, but must be postmarked by December 31 of the reporting year to be timely. Burden of proof of mailing is on the licensee.

Stat. Auth.: ORS 675.110
Stats. Implemented: ORS 675.110(14)
Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2008, f. & cert. ef. 3-26-08

858-040-0035

Programs Which Qualify for Continuing Education Credit

(1) Policy. The overriding consideration in determining whether a specific program qualifies as acceptable continuing education is that it be a formal program of learning which contributes directly to the professional competence of the licensee. It is the obligation of each licensee to select a course of study which will contribute to his or her professional competence as a licensed psychologist or licensed psychologist associate. Fulfillment of continuing education requirements is viewed as one necessary vehicle for maintaining standards of professional practice and for assuring the public of a high standard of psychological services.

(2) Acceptable Subject Matter. The continuing education activity must deal primarily with substantive psychological issues, psychological skills or laws, rules and ethical standards related to one's role as a licensee. In addition, the Board may approve continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is directly applicable to the licensee's practice. The responsibility for substantiating that a particular program is acceptable and meets the requirements rests solely with the licensee.

(3) Program Prerequisites. Continuing education programs shall qualify only if:

- (a) A description of the program is prepared in advance and preserved;
- (b) A record of attendance is maintained; and
- (c) The program is conducted by a qualified instructor or discussion leader. A qualified instructor or discussion leader is a person whose background, training, education, or experience makes it appropriate for the person to lead a discussion on the subject matter of the particular program.

(4) Qualifying Programs and Reporting Codes. The following programs shall qualify for continuing education credit provided they comply with the following and all other CE requirements:

(a) Substantive professional development programs of recognized mental health organizations (Q);

(b) University or college courses (Q):

(A) Credit courses. Each semester hour credit shall equal 15 hours toward the requirement. Each quarter hour credit shall equal 10 hours.

(B) Non-credit short courses. Each classroom hour shall equal one qualifying hour.

(c) Formally organized work place educational programs (Q);

(d) Formally organized study groups that comply with the following requirements (S);

(A) At least three other psychologists or mental health professional attend the activity;

(B) The study group prepares and preserves a syllabus of meeting dates and study topics in advance;

(C) Attendance at each meeting is taken and preserved;

(D) The study group designates an individual to serve as the recorder of the minutes;

(E) Minutes are kept of each study group meeting and are available to the Board upon request. The minutes must include the names of the participants present, the subject matter and references which relate to any written material utilized, and a discussion outline;

(e) Received Supervision or Received Consultation for a fee (C):

(A) Supervision or Consultation must be from a Qualified Instructor who is also a Psychologist licensed in accordance with ORS 675.030.

(B) Report must include the specific dates of supervision or consultation and the subject matter specifically discussed at each meeting.

(C) Credit shall be given only to the licensee paying for supervision or consultation, not to the licensee providing supervision or consultation.

(D) No credit shall be given to licensees receiving supervision to fulfill licensure requirements.

(f) Home Study courses (H).

(g) Published articles and books (P) on substantive psychological issues;

(h) Service as Lecturer, Discussion Leader, or Speaker (L):

(A) Credit as an instructor, discussion leader, or speaker shall be allowed for any meeting or engagement provided that the session is one which would otherwise meet the continuing education requirements of the participants.

(B) Credit under this subsection may only be claimed for work that is voluntary and unpaid, except for expenses.

(C) Credit shall be allowed for the first time a course is taught. No credit shall be allowed for repeat presentations unless an instructor can demonstrate that the program content was substantially changed and such change required significant additional study or research.

(D) Credit for licensees attending not as instructors, discussion leaders, or speakers shall be limited to the actual meeting time.

(i) Ethics (E) [See 858-040-0015(4)].

(j) Item Writers for Board's jurisprudence examination (?).

(l) Ethics Committee meetings of professional associations (S).

(m) Pain Management.

Stat. Auth.: ORS 675.110

Stats. Implemented: ORS 675.110(14)

Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2002, f. & cert. ef. 2-27-02, 858-040-0035(2) Renumbered from 858-040-0045; BPE 4-2002, f. & cert. ef. 10-11-02; BPE 1-2008, f. & cert. ef. 3-26-08

858-040-0036

Programs Which Do Not Qualify for Continuing Education Credit

(1) Marketing; investments; office organization; office procedures; office staff training;

(2) Yoga; therapeutic massage;

(3) Administrative staffing meetings;

(4) Computer skills;

(5) Managed Care and Health Maintenance Organization requirements (i.e., utilization review committee participation, record management, etc.);

(6) Practice building strategies; and

(7) Certain non-traditional therapies which are not widely recognized as within the scope of usual/effective practice (i.e. aromatherapy, thought-field therapy, astrological readings and rebirthing). However, as innovative therapies become accepted due to research or demonstrated clinical effectiveness, the Board may choose to accept formerly non-acceptable trainings.

Stat. Auth.: ORS 675.110

Stats. Implemented: ORS 675.110(14)

Hist.: BPE 2-2002, f. & cert. ef. 2-27-02; Renumbered from 858-040-0035(5); BPE 1-2008, f. & cert. ef. 3-26-08

858-040-0055

Credit Hours Granted

(1) Credit shall be given for actual hours attended.

(2) Student hours devoted to preparation do not qualify for credit.

(3) Travel time does not qualify for credit.

(4) Credit shall not be given for more than 25 hours of continuing education credit in a reporting period for home study and study group hours combined.

(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 25 hours of continuing education credit in a reporting period for lectures (preparation and teaching) and published material combined.

(7) Volunteer Item Writers for the Board's written jurisprudence examinations shall be given one continuing education credit for each clock hour worked.

Stat. Auth.: ORS 675.110

Stats. Implemented: ORS 675.110(14)

Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2008, f. & cert. ef. 3-26-08

ADMINISTRATIVE RULES

858-040-0065

Evidence of Completion for Random Audit

(1) Responsibility for documenting the acceptability of the program and the validity of credit rests with the licensee.

(2) Licensee must retain documentation for a period of two years after the reporting period.

(3) The following shall constitute evidence of completion if they satisfy requirements of 858-040-0025:

(a) For courses taken for academic credit from accredited universities and colleges: a copy of a transcript showing satisfactory completion of the course;

(b) For non-academic courses taken, a certificate of attendance;

(c) For formal individual home study programs, written evidence of completion from the sponsor;

(d) For formally organized study groups, a copy of the study group syllabus, and the recorder's study group meeting minutes;

(e) For consultation or supervision, copies of cancelled checks, or signed verification by the psychologist providing services; and

(f) For published material, a copy of pages of the material showing title, author, and date of publication.

Stat. Auth.: ORS 675.110

Stats. Implemented: ORS 675.110(14)

Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2008, f. & cert. ef. 3-26-08

858-040-0075

Verification (Random Audit)

The Board shall verify information submitted by licensees on a random basis. If a CE report is not approved, the licensee shall be so notified and shall be granted a period of time by the Board in which to correct the deficiencies noted.

Stat. Auth.: ORS 675.110

Stats. Implemented: ORS 675.110(14)

Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2008, f. & cert. ef. 3-26-08

858-040-0085

Reinstatement Requirements/Inactive to Active Status

(1) A person who applies to reinstate a license to practice psychology must comply with the appropriate continuing education requirements set forth in this rule prior to reinstatement. Application must be made on a form provided by the Board.

(2) A person who applies for reinstatement from inactive to active status within the two-year renewal period immediately following when the license was placed on inactive status must report, with the application for active license, the number of hours of qualifying continuing education credit required to renew the license on the person's normal reporting schedule.

(3) A person who applies for reinstatement to active status after two years and less than five years after the license was placed on inactive status must:

(a) Report with the application fifty (50) hours of qualifying continuing education credit, including 4 hours of ethics credit, and 7 hours of pain management education completed within the 24-month period immediately preceding the date of application; and

(b) Comply with continuing education requirements on a pro rata basis computed at 2 hours per month from the date of reinstatement to the end of the renewal period in which reinstatement occurs.

(4) A person who applies for reinstatement to active status more than 5 years after the license was placed on inactive status must:

(a) Report with the application fifty (50) hours of qualifying continuing education credit, including 4 hours of ethics credit, and 7 hours of pain management education completed within the 24-month period immediately preceding the date of the application; and

(b) Comply with continuing education requirements on a pro rata basis computed at two hours per month from the date of reinstatement to the end of the renewal period in which reinstatement occurs.

(5) A person whose license to practice psychology is suspended under ORS 675.110 and whose license is subsequently reinstated by the Board must meet the reinstatement requirements set forth in this rule.

Stat. Auth.: ORS 675.110

Stats. Implemented: ORS 675.110(14)

Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2008, f. & cert. ef. 3-26-08

858-040-0095

Failure to Comply

(1) A CE report shall be deemed timely if it is postmarked by December 31 of the reporting year and if it is acceptable.

(2) A licensee whose CE report is untimely shall pay a delinquent fee of \$200; and

(3) A licensee who submits an unacceptable CE report by December 31 shall have until January 31 of the year immediately following the reporting year to submit an acceptable report to avoid suspension or revocation of the license.

(4) CE reports must be postmarked by the date specified in this rule. Burden of proof of mailing is on licensee.

(5) To be licensed again, an individual whose license has been revoked for noncompliance of CE requirements must submit a standard application for licensure, pay the application fee, and meet all current licensure requirements.

Stat. Auth.: ORS 675.110

Stats. Implemented: ORS 675.110(14)

Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08

858-050-0100

Educational Requirements

The applicant shall have received a master's degree in psychology. The masters program shall include at least 45 quarter hours or 30 semester hours of graduate credit, 30 quarter hours or 20 semester hours of which must be in graded (not "pass-no pass") courses. Extension hours and correspondence courses shall not be considered for credit. Hours shall be from no fewer than five of the basic areas of psychology, including experimental psychology, learning theory, physiological psychology, motivation, perception, comparative psychology, statistical methods, design of research, developmental psychology, individual differences, social psychology, organizational psychology, personality theory, abnormal psychology and a minimum of one graduate level course posted on a transcript in ethics and psychological tests and measurements. The achievement in each such course must be satisfactory and the instruction be provided in the regular graduate program of a college or university accredited by the pertinent regional accrediting bodies.

Stat. Auth.: ORS 675.065

Stats. Implemented: ORS 675.065(1)(4)(c)

Hist.: PE 10, f. 4-10-75, ef. 5-11-75; PE 1-1979, f. & ef. 9-5-79; PE 1-1991, f. & cert. ef. 4-3-91; Renumbered from 858-010-0100; PE 4-1993, f. & cert. ef. 7-19-93; PE 1-1996, f. & cert. ef. 6-25-96; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2008, f. & cert. ef. 3-26-08

858-050-0105

Internship Requirements

Pursuant to ORS 675.065(4)(d) the applicant shall have completed a full-time internship of one year or one year of other supervised learning practicum deemed equivalent by the Board. The intern position and the internship setting must be oriented to application of psychological skills and knowledge. Every supervisor of an intern shall be a psychologist licensed in Oregon, or a psychologist licensed in another state with standards comparable to those in Oregon. While obtaining the requisite one-year supervised internship experience, the applicant shall be an employee or staff member of an institution or agency that provides day-to-day supervised experience in the intern's area(s) of specialization.

Stat. Auth.: ORS 675.065

Stats. Implemented: ORS 675.065(4)(d)

Hist.: PE 10, f. 4-10-75, ef. 5-11-75; PE 1-1991, f. & cert. ef. 4-3-91; Renumbered from 858-010-0105; PE 1-1996, f. & cert. ef. 6-25-96; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08

858-050-0110

Experience Requirements

Pursuant to ORS 675.065(4)(e) the applicant shall have completed three years of full-time supervised experience satisfactory to the Board. This experience shall be exclusive of the internship period, and shall be after the receipt of the master's degree. The guidelines used by the Board to define the three-year supervised experience requirement for psychologist associate applicants shall conform to those guidelines used in OAR 858-010-0036 to define supervised experience for psychologist applicants, except that:

(1) Pursuant to OAR 858-010-0036(4)(a) — Title. The psychologist associate shall be designated at all times the title "psychologist associate resident".

(2) Pursuant to OAR 858-010-0036(4)(d) — Duration of Psychologist Associate Resident Status. A psychologist associate resident contract will

ADMINISTRATIVE RULES

be effective for a period specified therein, not to exceed four years. The Board, in its discretion, may extend the contract beyond four years.

Stat. Auth.: ORS 675.010 - 675.150

Stats. Implemented: ORS 675.065(4)(e)

Hist.: PE 10, f. 4-10-75, ef. 5-11-75; PE 1-1991, f. & cert. ef. 4-3-91; Renumbered from 858-010-0110; PE 4-1993, f. & cert. ef. 7-19-93; BPE 1-2008, f. & cert. ef. 3-26-08

858-050-0120

National Written Examination

Applicants who have met the educational and internship requirements for licensure at the psychologist associate level shall be eligible to take the national written examination.

(1) Written Examinations for Masters Level Licensure. The Board shall utilize the national Examination for Professional Practice in Psychology (EPPP) developed by the Professional Testing Service (PES) of the Association of State and Provincial Psychology Boards (ASPPB) as its national written examination. Applicants whose educational credentials have been accepted by the Board as meeting its requirements for licensure as a psychologist associate shall be eligible to take the national written examination. Approved applicants desiring to take the EPPP must submit a written request to the Board's office. The Board shall provide PES with a list of eligible candidates. Applicants will receive an application packet from PES with the instructions for making arrangements to sit for the computer administered EPPP. The applicant must complete the PES application form and submit it, along with the examination fees, directly to PES. Eligible applicants must comply with all instructions established by PES in scheduling and sitting for the computer administered EPPP. Scores on the computer administered EPPP will be reported directly to the Board and to the applicant by PES on a monthly basis. The passing score for the national written examination prior to September 1, 2001, shall be the mean determined by master's level candidates taking the examination for the first time. For computer administered forms of the EPPP, the Board shall apply a scaled score of 500. Notice for request for special accommodations for verified disability or for English as a second language must be provided as required by 858-050-0125(1)(c).

(2) Re-Examination. Any applicant who fails to make a passing grade on the national written examination shall be allowed to take the examination a second time. If the examination is failed twice the applicant must obtain special permission from the Board to take the examination. Requests for reexamination must be reviewed and approved by the Board. The applicant is required to submit a written study plan for the Board to review and approve.

(3) Conduct During the Examination. The "Examination for the Professional Practice in Psychology" is the exclusive property of the Association of State and Provincial Psychology Boards. No part of the examination may be copied or reproduced in part or whole by any means whatsoever. A candidate's participation in any irregularity occurring during the examination, such as giving or obtaining information or aid which is not authorized by the Oregon Board of Psychologist Examiners, such methods including, but not limited to, observation or subsequent statistical analysis, may result in termination of the candidate's participation, application and forfeiture of the examination fee.

Stat. Auth.: ORS 675.065

Stats. Implemented: ORS 675.065

Hist.: PE 10, f. 4-10-75, ef. 5-11-75; PE 1-1981(Temp), f. & ef. 12-9-81; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & ef. 7-23-82; PE 1-1991, f. & cert. ef. 4-3-91; Renumbered from 858-010-0120; PE 1-1992, f. & cert. ef. 1-16-92; PE 4-1993, f. & cert. ef. 7-19-93; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2008, f. & cert. ef. 3-26-08

858-050-0125

Procedures for Oregon Jurisprudence Examination

(1) Jurisprudence Examination for Licensure as a Psychologist Associate (Masters Level).

(a) Candidates who have successfully passed the national written examination and have completed the requisite 36 months of fulltime supervised experience for licensure shall be eligible to sit for the jurisprudence examination. An application for licensure must be complete as defined in OAR 858-010-0010 at least 60 days prior to the jurisprudence examination to be considered eligible. Board staff shall have discretion in extending the deadline for up to 5 business days.

(b) The purpose of the jurisprudence examination is to determine the competency of each candidate in applicable laws and regulations, including ethical principles.

(c) Special Accommodations. Notice for request for special accommodations for verified disability or for English as a second language must be made at the time the request to sit for the examination is made, or when the disability becomes known to the candidate. The request must include:

(A) Verified Disability: Written verification of disability from a qualified care provider (i.e. a person certified or licensed by the state to provide such services) detailing:

(i) Nature, extent and duration of disability;

(ii) Recommendation(s) for accommodation.

(B) English as a Second Language: Written request for reasonable accommodation detailing:

(i) Level of proficiency in English including, but not limited to, number of years speaking and/or writing English; list of all national written or jurisprudence examinations, academic coursework, and dissertation in English language;

(ii) History of special accommodations granted in similar testing circumstances, for example, interpreter or extra time granted in jurisprudence examination process in other licensing jurisdictions or degree granting institution;

(iii) Statement documenting extent that English will or will not be the language in which professional services are provided;

(iv) Other information to support request for special accommodation;

(v) Recommendation(s) for accommodation.

(2) Schedule of Jurisprudence Examinations. Examinations shall be given at least twice a year. A candidate must request in writing to sit for the examination. The Board shall approve candidates to sit for the examination during its regularly scheduled meeting held prior to the month of the examination or at least 60 days prior to the examination, whichever occurs first. The supervisor's final written evaluation of the supervision must accompany the written request. The evaluation must describe the candidate's areas of proficiency and skills the candidate possesses, and a summary of the candidate's training and experience which have led to competence areas. The evaluation must document the number of hours that the candidate has completed under the supervision of a psychologist. It is the candidate's responsibility to provide the Board a complete summary of all training experiences that are intended to fulfill the supervisory work requirement. When the Board has determined that the application is in order, the candidate shall be approved to sit for the jurisprudence examination. Once a candidate has been approved to sit for the examination, the fee is not refundable. At least thirty days prior to the examination date, written notification shall be given to candidates who have been approved to take the examination. Written notification shall include time, date, and location of the examination and a copy of Oregon law and administrative rules regarding psychologist and psychologist associate licensure.

(3) Jurisprudence Examination Scoring and Result Procedures. Candidates shall be assigned a number so test scorers do not know the identity of the test taker until the examination report is prepared for the Board. The Board shall determine the passing score. Candidate names and scores shall be submitted to the Board for confirmation of the examination results and to vote on new licensees at their next scheduled meeting or within 30 days, whichever occurs first. Board staff shall notify each candidate in writing regarding the result of the examination. If an examinee has a pending complaint under investigation, the Board may, in its discretion, delay voting on the licensure of that examinee until the complaint has been resolved.

(4) Content of the Jurisprudence Examinations. The examination shall be designed to measure the examinee's knowledge and application of federal, state and local laws and regulations related to the professional practice of psychology, including professional ethical principles incorporated by Board statute and rule.

(5) Administration of the Jurisprudence Examination.

(a) The Board, on its own motion or upon the recommendation of its delegates, shall determine the questions on which an applicant may be examined.

(b) The Board or its delegates shall compile a candidate handbook that includes a copy of the Board's examination rules and an explanation of board requirements related to scheduling and the conduct of the examination. The handbook shall be reviewed annually and may be revised, as deemed appropriate, and shall be provided to each applicant for examination at least thirty days prior to the examination.

(6) Reconsideration and Reexamination.

(a) Reconsideration/Rescoring. Within thirty days after notice of the examination results, an applicant who does not pass the examination may petition the Board in writing to have their examination rescored.

(b) Review. An applicant who does not pass the examination may review their examination record at the Board's office within a period of ninety days following the date of the examination and upon written request to the Board. The purpose of the review is to assist the applicant prepare to retake the examination. To maintain test security, the applicant shall sign a confidentiality agreement. No more than one inspection shall be allowed.

ADMINISTRATIVE RULES

(c) Reexamination. An applicant who does not pass the examination may be reexamined. If an applicant does not pass the second examination and wishes to take a third examination the applicant must submit a study plan prior to being approved for the third examination. If a candidate fails to pass the third examination, the candidate's application for licensure shall be denied. The Board's decision shall be final.

(7) Disqualification. A candidate sitting for the jurisprudence examination may be disqualified during or after the examination for conduct which affects the integrity of the candidate's performance or the examination including, but not limited to, giving or receiving aid, directly or indirectly, during the examination process, recording the examination, or removing or attempting to remove any examination related information from the premises. Disqualification shall invalidate the examination, result in forfeiture of the examination fee and denial of the application.

Stat. Auth.: ORS 675.065

Stats. Implemented: ORS 675.065

Hist.: PE 10, f. 4-10-75, ef. 5-11-75; PE 1-1979, f. & ef. 9-5-79; PE 1-1981(Temp), f. & ef. 12-9-81; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & ef. 7-23-82; PE 2-1990(Temp), f. & cert. ef. 10-11-90; PE 1-1991, f. & cert. ef. 4-3-91; Renumbered from 858-010-0125 & 858-010-0130; PE 2-1991, f. 8-15-91, cert. ef. 8-16-91; PE 1-1996, f. & cert. ef. 6-25-96; PE 1-1997, f. & cert. ef. 6-17-97; BPE 1-2000(Temp), f. 3-8-00, cert. ef. 3-8-00 thru 9-4-00; BPE 3-2000, f. & cert. ef. 9-7-00; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2004(Temp), f. & cert. ef. 3-2-04 thru 8-29-04; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2006, f. 8-29-06, cert. ef. 9-1-06; BPE 1-2008, f. & cert. ef. 3-26-08

858-050-0140

Continued Supervision of Licensed Psychologist Associates

Before the initial license is issued, the psychologist associate and the supervising licensed psychologist must file with the Board the form entitled "Contract for Continued Supervision of a Licensed Psychologist Associate." Following approval of the contract, the psychologist associate will be issued an initial license that designates the name of the supervising psychologist. Day-to-day supervision of the licensed psychologist associate is the responsibility of the supervisor and includes such face-to-face consultation as is required by the nature of the work of the psychologist associate, and is consistent with accepted professional practices in psychology.

Stat. Auth.: ORS 675.065

Stats. Implemented: ORS 675.065

Hist.: PE 10, f. 4-10-75, ef. 5-11-75; PE 1-1991, f. & cert. ef. 4-3-91; Renumbered from 858-010-0140; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-2008, f. & cert. ef. 3-26-08

858-050-0145

Representation to the Public While under Supervision

Clients must be informed of the status of the supervised psychologist associate, that the licensed psychologist associate is supervised by a licensed psychologist. The psychologist associate must inform the client to contact the supervisor for further consultation relating to the client's case. Psychologists must acknowledge in writing any work provided by the psychologist associate that is utilized in the work product of the psychologist.

Stat. Auth.: ORS 675.065

Stats. Implemented: ORS 675.065

Hist.: PE 10, f. 4-10-75, ef. 5-11-75; PE 1-1991, f. & cert. ef. 4-3-91; Renumbered from 858-050-0145; PE 1-1996, f. & cert. ef. 6-25-96; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2008, f. & cert. ef. 3-26-08

858-050-0150

Application for Independent Status

A licensed psychologist associate may apply to the Board for authority to function independently as a psychologist associate. Independent status will be granted only after at least three years of work as a licensed psychologist associate at a high level of demonstrated professional proficiency.

Stat. Auth.: ORS 675.065

Stats. Implemented: ORS 675.065

Hist.: PE 10, f. 4-10-75, ef. 5-11-75; PE 1-1991, f. & cert. ef. 4-3-91; Renumbered from 858-010-0150; PE 4-1993, f. & cert. ef. 7-19-93; PE 1-1996, f. & cert. ef. 6-25-96; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2008, f. & cert. ef. 3-26-08

Bureau of Labor and Industries Chapter 839

Rule Caption: Rule amendments that implement statutory changes to Oregon housing discrimination law.

Adm. Order No.: BLI 7-2008(Temp)

Filed with Sec. of State: 3-20-2008

Certified to be Effective: 3-25-08 thru 9-21-08

Notice Publication Date:

Rules Amended: 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, 839-003-0240, 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

Subject: Amend the administrative rules listed above in order to implement House Bill 3639, enacted by the 2008 special session of the Oregon Legislature, and conforms rules to federal housing discrimination law.

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

839-003-0005

Definitions

Except where otherwise required by ORS 654.005 and except as provided below, definitions for terms used in these rules are found in ORS 659A.001 and 659A.100:

(1) "Administrator" means the Administrator of the Civil Rights Division of the Bureau of Labor and Industries or a designee of the administrator.

(2) "Bureau" means the Bureau of Labor and Industries.

(3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries or a designee of the commissioner.

(4) "Complaint" means for the purpose of ORS chapter 659A, except complaints alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, a written, verified statement signed by the complainant or the complainant's attorney that:

(a) Gives the name and address of the complainant and the respondent;

(b) Identifies the protected class basis of the complaint;

(c) Describes the actions complained of, including:

(A) The date(s) of occurrence;

(B) What the action was and how it harmed the complainant; and

(C) The causal connection between the complainant's protected class and the alleged harm.

(5) "Complainant" means a person filing a complaint personally or through an attorney.

(6) "Days," unless otherwise stated in the text of a document, means calendar days. "Work days" means Monday through Friday, except holidays officially recognized by the State of Oregon or the federal government.

(7) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.

(8) "EEOC" means the Equal Employment Opportunity Commission of the federal government.

(9) "Federal Housing Law" means The Fair Housing Act (42 U.S.C. 3601 et seq.) for which the U.S. Department of Housing And Urban Development ("HUD") has jurisdiction.

(10) "Notice" means written information delivered personally or sent by mail to the person's last known personal or business address or business address of the person's designated representative.

(11) "OSEA" means the Oregon Safe Employment Act, ORS 654.001 et seq.

(12) "Protected class" means a group of people protected by law from discrimination on the basis of a shared characteristic, or a perception of that characteristic, such as race, sex, age, disability or other.

(13) "Person" has the meaning given in ORS 659A.001(9).

(14) "Respondent" includes any person or other entity against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(15) "Formal Charges" are formal charges drafted and issued by the bureau's Hearings Unit.

(16) "Substantial evidence" means proof that a reasonable person would accept as sufficient to support the allegations of the complaint.

(17) "Substantial Evidence Determination" means the division's written findings of substantial evidence.

(18) "Written verified complaint" means a complaint that is:

(a) In writing; and

(b) Under oath or affirmation.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.001, 659A.145 & 659A.421, Fed Housing Law

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 7-1982, f. & ef. 4-22-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007 f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

ADMINISTRATIVE RULES

839-003-0010

Who May File

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. Complaints of housing discrimination must be filed in accordance with 839-003-0200.

(1) Any person claiming to be harmed by an act prohibited by statutes enforced by the Civil Rights Division may file a complaint with the division personally or through an attorney.

(2) Any employee, or a representative authorized to do so by ORS 654.062(2), may file a complaint with the division alleging discrimination by an employer against the employee for raising issues of employee safety or health in the workplace.

(3) The commissioner or Attorney General of Oregon may file a complaint whenever there is reason to believe that a person or entity has violated statutes enforced by the division.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.820 & 659A.825

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 7-1982, f. & ef. 4-22-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0020

Civil Suit

As used in enforcing ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law, except as provided below.

(1) A person alleging unlawful discrimination under state law may file a civil suit as provided in ORS 659A.870 to 659A.885, or 30.680.

(a) A person is not required to file a complaint of a violation of state law with the division before filing a civil suit.

(b) A person filing a civil suit in state or federal court waives the right to file a complaint with the division with respect to those matters alleged in the civil suit. This subsection does not apply to a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law.

(2) After filing a complaint with the division, a complainant may file a civil suit in state or federal court alleging the same matters as those alleged in the complaint filed with the division. The complainant should notify the division of the civil suit. When the division receives notice from the complainant or complainant's attorney, or court documents indicating that such a suit has been filed, the division will dismiss the complaint. The division will notify the complainant and respondent that the division has dismissed the complaint and will take no further action. This subsection does not apply to a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law.

(3) The commissioner will notify the complainant in writing of the right to file suit in state court, as provided in ORS 659A.870 to 659A.885, when a complaint is dismissed by the division or on the one-year anniversary of the complaint filing, whichever occurs first. The complainant will have 90 days from the notice mailing date to file a civil suit. A complainant filing suit against a public body must also file a tort claim notice as required by ORS 30.275. This subsection does not apply to a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law.

(4) A civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a public body as defined in ORS 30.260, based on an unlawful employment practice must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820.

(5) An action alleging breach of a division settlement agreement, entered into under ORS 659A.001 to 659A.030, 659A.233, 659A.303, 659A.145, 659A.409, 659A.420, 659A.421, 659A.150 to 659A.224 and 659A.800 to 659A.890, may be filed under 659A.860 in accordance with the applicable statute of limitations.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 30.275, 30.680, 659A.001-659A.030, 659A.233, 659A.303, 659A.409, 659A.420, 659A.421, 659A.150-659A.224 & 659A.800-659A.890

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 12-1982, f. & ef. 8-10-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 9-2006, f. 3-16-06, cert. ef. 3-20-06; BLI 24-2006(Temp), f. 7-5-06, cert. ef. 7-7-06 thru 1-3-07; BLI 38-2006, f. 10-25-06, cert. ef. 10-27-06; BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0025

Filing a Complaint

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. Complaints of housing discrimination must be filed in accordance with 839-003-0200.

(1) A person or the person's attorney may file a complaint, in person or by mail, with the division at any bureau office in the state of Oregon. The complaint must meet the standards provided in OAR 839-003-0005(4).

(2) The filing date is the date the division receives a complaint that meets the standards contained in OAR 839-003-0005(4).

(3) Except as provided in section (5) of this rule, a person must file a complaint with the division no later than one year after the alleged unlawful practice. If the alleged unlawful practice is of a continuing nature, the right to file a complaint exists so long as the person files the complaint within one year of the most recent date the unlawful practice occurred.

(4) A person alleging constructive discharge must file a discrimination complaint with the division within one year of the date the discharge occurred.

(5) A person alleging discrimination for reporting or opposing unsafe or unhealthy work conditions under ORS 654.062 must contact the division within 90 days of having reasonable cause to believe that such violation has occurred. An employee would have reasonable cause to believe a violation has occurred on the earliest date that the employee:

(a) Believed retaliation had occurred against the employee for opposing employee health and safety hazards; and

(b) Knew or should have known of the right to file a complaint with the division and of the requirement that the complaint be filed within 90 days of the alleged retaliation.

(A) If a notice required by OSEA, as provided in OAR 437-001-0275(2)(a), was properly posted in the employee's workplace, continuously on and following the date of the alleged retaliation, the division will find that the employee knew or should have known of the 90-day filing requirement.

(B) If the employer failed to post the required OSEA poster, the 90-day filing requirement will begin on the date the employee learned of the right to file a complaint and of the 90-day filing requirement. The employee may establish this date based on the employee's own statement or other evidence offered by the employee.

(C) If the employer disagrees with the employee's presented date as the date the employee learned of the right to file a complaint, the burden is on the employer to show that the employee knew or should have known on an earlier date.

(D) If extenuating circumstances exist, the division may extend the 90-day period as provided in 29 CFR Part 15(d)(3).

(6) The procedures for filing a complaint are as follows:

(a) A person or the person's attorney makes an inquiry to the division;

(b) The division may provide the person or the person's attorney with a letter of information and/or questionnaire to assist in determining if there is a basis for filing a complaint;

(c) If the division determines the person has a basis for filing a complaint, the division will draft a complaint based upon the information provided by the person and send or give the complaint to the person or the person's attorney for verification. The person or the person's attorney will request any necessary changes to the complaint.

(d) The person or the person's attorney will verify and sign the complaint. The complaint will then be submitted to the division.

(e) If the person is an unemancipated minor the complaint must be signed by the minor and the parent or legal guardian of the minor.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 654.062, 659A.820 & 29 CFR Part 15(d)(3)

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 12-2004, f. 10-22-04 cert. ef. 10-25-04; BLI 19-2007(Temp), f. & cert. ef. 7-18-07 thru 1-1-08; BLI 29-2007, f. 9-27-07 cert. ef. 10-1-07; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0040

Amendment of Complaints

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. Complaints of housing discrimination must be amended in accordance with 839-003-0205.

(1) The division may amend a complaint to correct technical defects and to add additional persons as respondents. The division may amend a complaint on its own initiative or at the complainant's request (with the division's agreement) at any time prior to the issuance of Formal Charges, except that respondents may only be added during the course of investigation. Examples of technical defects include: clerical errors, additions or deletions, name and address corrections, and statute citation errors.

(2) A complaint may be amended to add a protected class only if the addition is supported by facts already alleged. New facts may not be added. If new facts are alleged, the complainant must file a new complaint meet-

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ing the standards provided in OAR 839-003-0005(4).

(3) Amended complaints need not be verified or signed by the complainant or the complainant's attorney.

(4) The division will send a copy of the amended complaint to the complainant and all respondents.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.820

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 2-2005, f. 1-6-05, cert. ef. 1-7-05; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0045

Withdrawal of Complaint

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. The withdrawal of a housing discrimination complaint is addressed in 839-003-0210. A complainant may voluntarily withdraw a complaint at any time by giving the division written notice of the complainant's decision to withdraw. If the complainant wants a federal "right to sue letter," the complainant must provide a written request to EEOC or to the division. If the complainant makes the request to the division, the division will forward the request to EEOC.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0050

Administrative Dismissal

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. Administrative dismissal of a housing discrimination complaint is addressed in 839-003-0215.

(1) The division will dismiss the complaint if it determines that the bureau has no jurisdiction over the allegations of the complaint.

(2) The division may dismiss the complaint if the complainant files a proceeding, based on the same set of facts, with another agency having the authority to provide remedy to the complainant for the alleged discrimination.

(3) If a complainant or the complainant's attorney fails to cooperate with the division, the division may dismiss the complaint.

(4) The complainant must notify the division in writing of address and telephone number changes. When a complainant cannot be located by reasonable efforts, the division may dismiss the complaint.

(5) The division will dismiss a complaint unless substantial evidence of unlawful discrimination is found. Such dismissal notice will include a statement that the complaint has been dismissed and a notice of complainant's right to file a civil suit, if such right exists.

(6) The division will dismiss complaints alleging violation of federal discrimination statutes administered by EEOC (OAR 839-003-0015) in accordance with federal requirements.

(7) The division may elect to administratively dismiss a complaint without investigation. In such instances, the division will notify the complainant and respondent of the dismissal and issue notice of the complainant's right to file a civil suit, if such right exists.

(8) The division will dismiss a complaint if it learns that the complainant has filed a civil suit alleging the same matters, as provided in OAR 839-003-0020.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 30.680, 659A.835, 659A.850 & 659A.870 - 659A.885

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0055

Conciliation Agreements Prior to Completion of the Investigation

As used in enforcing ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law.

(1) The division encourages complainants and respondents to resolve complaints by mutual agreement at any time. The division will facilitate settlement negotiations between the complainant and respondent, as provided in this rule, at any time during the investigation.

(2) If the complainant and respondent agree upon settlement, the division will draft a settlement agreement that states:

(a) That a "no fault" settlement has been reached;

(b) That the complainant, the respondent and the Civil Rights Division accept the terms of the agreement as a resolution of the complaint;

(c) The specific action(s) the complainant and respondent will take as

a result of the complaint settlement and the time within which the action(s) will be taken; and

(d) That the division may investigate any alleged breach of the agreement.

(3) The settlement agreement will not include release language that applies to any forum other than the Civil Rights Division.

(4) The complainant, the respondent and a representative of the division will sign the division's settlement agreement. The complainant and respondent will receive copies of the signed agreement. Upon execution of this agreement, the division will notify the complainant and respondent that the complaint is dismissed.

(5) The division may allow the complainant and the respondent to enter into a private agreement with release language in addition to the division's agreement. The division will not be a party to nor enforce private agreements.

(6) Nothing in these rules is intended to preclude private settlement between the complainant and the respondent.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.835, 659A.840 & 659A.850

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007 f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0060

Fact-Finding Conference

As used in enforcing ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law.

(1) At its discretion, the division may hold a fact-finding conference. This conference may encompass part or all of the division's investigation of the complaint. The complainant and the respondent will attend the conference and a division representative will conduct the conference. The purposes of the conference will be to:

(a) Review evidence regarding the complaint;

(b) Identify the undisputed elements of the complaint;

(c) Define and, if possible, resolve the disputed elements of the complaint; and

(d) Attempt to settle the complaint.

(2) The division will schedule the conference, notifying the complainant and the respondent of the time and place. The division may require the complainant and the respondent to provide information and documents relevant to the complaint. The division may issue subpoenas ad testificandum to compel the respondent's representatives to attend the conference and issue subpoenas duces tecum to compel the production of documents at the conference.

(3) The conference may be rescheduled, subject to the division's approval, at the request of the complainant or the respondent, or at the division's discretion.

(4) The complainant's failure to attend the conference may cause the complaint to be administratively dismissed if the division determines that the complainant has failed to cooperate pursuant to OAR 839-003-0050(3).

(5) If the complainant attends the conference but the respondent's representatives fail to attend, the division representative may proceed based on the information in the division's possession.

(6) The respondent's representatives at a fact-finding conference should include persons with:

(a) Knowledge of the facts bearing on the complaint; and

(b) Authority to negotiate a settlement agreement.

(7) The complainant and the respondent may be accompanied by legal counsel, but counsel's role is strictly limited to providing legal advice to the counsel's client.

(8) The division's representative conducting the conference may:

(a) Question the participants about their knowledge of the situation;

(b) Ask for additional statements and documentation from the complainant and the respondent;

(c) Terminate discussion of a particular point when further discussion would be irrelevant or repetitive;

(d) Exclude witnesses with the exception of the complainant, the respondent and counsel;

(e) Order unruly participants to leave the conference;

(f) Tape-record the conference with the knowledge of the participants;

(g) Attempt to negotiate a settlement agreement between the parties; and

(h) Recess or terminate the conference at any time.

(9) If the conference does not result in settlement, the division will either continue the investigation or dismiss the complaint. This subsection does not apply to a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law.

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Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.800, 659A.850 & 659A.860
Hist.: BL 7-1981, f. & ef. 6-25-81; BL 1-1993, f. 3-25-93, cert. ef. 4-1-93; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007 f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0065

Investigations

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. Investigation of housing discrimination complaints is addressed in 839-003-0220.

(1) The division may investigate the allegations contained in a complaint to determine objectively whether there is substantial evidence of unlawful discrimination. The division will determine the method by which complaints will be investigated or otherwise processed. The division will not investigate allegations occurring more than one year prior to the date the complaint was filed unless the allegations constitute a continuing violation or the circumstances occurring more than one year prior to the date the complaint was filed pertain to timely allegations.

(2) The investigation may include interviews with the complainant, the respondent representatives, and any other persons whom the division chooses to interview. The investigation may also involve the examination and analysis of written documents.

(3) The investigator may tape-record statements with the knowledge of the participants.

(4) The respondent has the right to have a representative present during interviews of current supervisory employees.

(5) The respondent's current, non-supervisory, or former employees, may request that a representative for the respondent be present during interviews by a division representative.

(6) A complainant, respondent or witness interviewed by the division may request a copy of the summary report of the individual's own interview. The division may request that the complainant, respondent or witness confirm by signature that the summary report is an accurate representation of the interview. The complainant, respondent or witness may submit to the division additional comments regarding the interview.

(7) The division representative may make written request to the respondent for documents, records, files or other sources of evidence. The respondent will provide such information within 21 days of the date of the division's written request. The division may grant the respondent additional time in which to respond.

(8) The division may issue subpoenas compelling division access to premises, records and witnesses. Failure to respond to a subpoena may result in the division making a determination based on available information.

(9) Upon conclusion of the investigation, the division will either issue a Substantial Evidence Determination or will dismiss the complaint. The division will mail a copy of the Substantial Evidence Determination or dismissal notice to the complainant and respondent.

(10) If the division does not find substantial evidence of unlawful discrimination, the division will dismiss the complaint, notify the complainant and respondent of the dismissal and notify the complainant of the right to file a civil suit, if such right exists.

(11) If the division finds substantial evidence of unlawful discrimination, the complaint may be assigned to a division representative for settlement. However, the commissioner may proceed directly to a contested case hearing if the interests of justice so require.

(12) A Substantial Evidence Determination or dismissal may not be appealed to the division.

(13) The division may reopen a case at its own discretion.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.800, 659A.805, 659A.835 & 659A.870 - 659A.885

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 13-1981, f. & ef. 11-18-81; BL 12-1982, f. & ef. 8-10-82; BL 12-1992(Temp), f. & cert. ef. 11-3-92; BL 2-1993, f. 3-25-93, cert. ef. 4-1-93; BL 4-1996, f. & cert. ef. 3-12-96; BL 2-1998, f. & cert. ef. 2-3-98; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0070

Settlement Process After Substantial Evidence Determination

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. The settlement process after substantial evidence determination in housing discrimination complaints is addressed in 839-003-0225.

(1) If the division finds substantial evidence of unlawful discrimination, the division may seek to eliminate the effects of the unlawful discriminatory act(s) by conference, settlement and persuasion. The division will

facilitate settlement negotiations between the complainant and respondent as provided in OAR 839-003-0055.

(2) If no settlement agreement is reached in the period of time set aside for settlement after a Substantial Evidence Determination, the division retains the discretion to further negotiate settlement, administratively dismiss the complaint, or proceed to a contested case hearing.

(3) The complainant may withdraw the complainant's own complaint at any time.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.835 & 659A.840

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0080

Access to Records/Confidentiality

As used in enforcing ORS Chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law.

(1) During an investigation, the contents of the investigative file and related records, other than the complaint, are confidential. However, any individual may inspect and copy information or statements that the individual has given to the division. The division may charge a fee for inspection or to copy information.

(2) After the complaint is closed, a copy of the closed file will be available for a fee. To obtain a copy of a closed file a person must make a written request to the division. The request must include the person's name, address and telephone number, the complainant's and the respondent's names and payment of the fee, as determined by the division.

(3) The division will not at any time disclose any information that is required to be kept confidential by ORS 659A.840(6) or any other state or federal law or under any contractual agreement between the bureau and federal, state and local agencies.

(4) A complainant's or respondent's designation of information as confidential will not supercede the State of Oregon Public Records Law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 192.440(3) & 192.501(8)

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 10-1984(Temp), f. & ef. 9-6-84; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007 f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0085

Subpoenas

As used in enforcing ORS Chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law.

(1) The commissioner or the commissioner's designee may issue a subpoena to require:

(a) The presence and testimony of witnesses;

(b) The production of evidence, including but not limited to books, records, correspondence or documents in the possession or under the control of the person subpoenaed; and

(c) Access to evidence to be examined or copied.

(2) If any person fails to comply with a subpoena issued under this rule, the commissioner may initiate the legal procedures necessary to enforce compliance.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.800(4)

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0090

Remedy

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. Remedies in complaints of housing discrimination are in addressed in 839-003-0230.

(1) In cases of employment discrimination remedy includes, but is not limited to:

(a) Employment or reemployment;

(b) Wages or other benefits lost due to the practice;

(c) Out-of-pocket expenses attributable to the practice;

(d) Compensation for emotional distress and impaired personal dignity; and

(e) Interest.

(2) Consideration of all acts alleged to comprise a hostile work environment in a complaint, including alleged acts occurring outside the one year statute of limitations for filing a complaint, is permissible for the purposes of assessing liability, so long as any act contributing to that hostile work environment takes place within the statutory period.

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(3) In order to recover damages for lost wages, the complainant will generally be required to mitigate damages by seeking employment.

(a) Earned income from employment may be deducted from lost wage damages.

(b) In most cases, unearned income such as unemployment or public assistance benefits will not be deducted from lost wage damages.

(4) Settlements of complaints and the awards in commissioner's Final Orders do not necessarily include all possible remedies named in sections (1) and (2) of this rule. Nothing in this rule will be construed to limit or alter the statutory powers of the commissioner to protect the rights of persons similarly situated to the complainant or to order the performance of an act or a series of acts designed to eliminate the effect of any unlawful practice found.

(5) The commissioner may order the respondent to eliminate the effects of any unlawful practice found and may require respondent to:

(a) Perform a designated act or series of acts that are calculated to carry out the policy of these rules in order to eliminate the effects of an unlawful practice and to protect the rights of those affected;

(b) Take action and submit reports to the commissioner on the manner of compliance with the terms and conditions specified in the commissioner's order or agreement;

(c) Refrain from any action prohibited by the order or agreement that would jeopardize the rights of the individuals or groups named in the complaint or would frustrate the purpose and the policy of these rules and relevant statutes.

(6) When the respondent makes an offer of remedy, the division will inform the complainant of the offer. If the complainant does not accept an offer that the division has determined will eliminate the effects of the unlawful practice, the division may dismiss the complaint.

(7) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by suit in equity to compel specific performance.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.800, 659A.850, 659A.860, 659A.865, 659A.885

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 20-2005, f. 10-20-05, cert. ef. 10-21-05; BLI 8-2006, f. 3-16-06 cert. ef. 3-20-06; BLI 36-2007 f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0095

Enforcement of Settlement Agreements and Orders

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. Enforcement of settlement agreements and orders is addressed in 839-003-0240.

(1) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by suit in equity to compel specific performance, as provided in ORS 659A.860.

(2) If the complainant believes the terms of a bureau settlement agreement have been breached, the complainant may file a complaint with the division alleging retaliation, or file a new complaint re-alleging the original violation if it is still occurring. The division may review the provisions of the settlement agreement and investigate.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.850, 659A.860 & 659A.865

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0100

Commissioner's Complaint

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. Commissioner's complaints of housing discrimination are addressed in 839-003-0245.

(1) The Commissioner of the Bureau of Labor and Industries may make, sign and file a complaint whenever the commissioner has reason to believe that any person or group of persons has been denied rights due to an unlawful practice or employment practice. The complaint will be processed in the same manner as any other complaint filed under OAR 839-003-0005.

(2) In the matter of concurrent complaints, nothing in these rules will be construed to:

(a) Require or prohibit the filing of a commissioner's complaint involving the same or similar issues or allegations stated in any other complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885;

(b) Require or prohibit the continued processing or initiation of a

commissioner's complaint in the event that a complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885, is resolved or dismissed, with or without remedy to the individual; or

(c) Alter or limit an individual's private right of action provided under ORS 659A.870 to 659A.885.

Stat. Auth.: ORS 183 & 659A.805

Stats. Implemented: ORS 659A.820, 659A.825 & 659A.870 - 659A.885

Hist.: BL 7-1985(Temp), f. & ef. 10-17-85; BL 11-1986, f. & ef. 10-29-86; BL 4-1996, f. & cert. ef. 3-12-96; BLI 11-2000, f. & cert. ef. 3-24-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0200

Filing a Complaint Under State and Federal Housing Discrimination Laws

(1) A person claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law includes a person who believes that the person has been injured by an unlawful practice or discriminatory housing practice or will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(2) A person claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law or the person's attorney, or the commissioner may file a complaint, in person or by mail, with the division at any bureau office in the state of Oregon. Complaint means a written, verified statement signed by the complainant or the complainant's attorney that:

(a) Gives the name and address of the complainant and the respondent;

(b) Describes the acts or omissions alleged to be an unlawful practice, including those acts or omissions the person believes are about to occur and;

(c) Describes how the person was harmed or will be harmed by such actions.

(3) The filing date is the date the division receives a complaint that meets the standards contained in OAR 839-003-0200(2).

(4) A person must file a complaint with the division no later than one year after the alleged unlawful practice. If the alleged unlawful practice is of a continuing nature, the right to file a complaint exists so long as the person files the complaint within one year of the most recent date the unlawful practice occurred.

(5) The procedures for filing a complaint are as follows:

(a) A person or the person's attorney makes an inquiry to the division;

(b) The division may provide the person or the person's attorney with a letter of information and/or questionnaire;

(c) The division will draft a complaint based upon the information provided by the person and send or give the complaint to the person or the person's attorney for verification. The person or the person's attorney will request any necessary changes to the complaint.

(d) The person or the person's attorney will verify and sign the complaint. The complaint will then be submitted to the division.

(e) If the person is an unemancipated minor the complaint must be signed by the minor and the parent or legal guardian of the minor.

(6) The Division will serve notice upon the complainant acknowledging the filing of the complaint and advising the complainant of the time limits and choice of forums provided under ORS chapter 659A and federal housing law.

(7) Within 10 days after the filing of a complaint, the division will serve the respondent with a copy of the original complaint that identifies the alleged discriminatory housing practice and a notice that advises the respondent of the procedural rights and obligations of the Respondent, including the respondent's right to file an answer to the complaint.

(a) Each respondent may file, not later than 10 days after receipt of notice from the division, an answer to such complaint.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 654.062, 659A.145, 659A.421, 659A.820 & 29 CFR Part 15(d)(3)

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0205

Amending a Housing Discrimination Complaint

(1) The division may amend a complaint to correct technical defects, to add additional persons as respondents and to add additional information found during the investigation of a complaint, including new factual allegations. The division may amend a complaint on its own initiative or at the complainant's request (with the division's agreement) at any time prior to the issuance of Formal Charges, except that respondents may only be added during the course of investigation. Examples of technical defects include:

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clerical errors, additions or deletions, name and address corrections, and statute citation errors.

(a) Within 10 days after identifying an additional person who will named as a respondent, the division will serve the person with a copy of the complaint that identifies the alleged discriminatory housing practice and a notice that advises the person of the procedural rights and obligations of the person, including the person's right to file an answer to the complaint.

(A) Such notice, in addition to meeting the requirements of subsection (1)(a), will explain the basis for the division's belief that the person to whom the notice is addressed is properly joined as a respondent.

(B) Each respondent may file, not later than 10 days after receipt of notice from the division, an answer to such complaint.

(2) The division will send a copy of the amended complaint to the complainant and all respondents.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.145, ORS 659A.421, ORS 659A.820
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0210

Withdrawal of a Housing Discrimination Complaint

A complainant may voluntarily withdraw a complaint at any time by giving the division written notice of the complainant's decision to withdraw.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.145, 659A.421
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0215

Administrative Dismissal of a Housing Discrimination Complaint

(1) The division will dismiss the complaint if it determines that the bureau has no jurisdiction over the allegations of the complaint.

(2) If a complainant or the complainant's attorney fails to cooperate with the division, the division may dismiss the complaint.

(3) The complainant will notify the division in writing of address and telephone number changes. When a complainant cannot be located by reasonable efforts, the division may dismiss the complaint.

(4) The division will dismiss a complaint unless substantial evidence of unlawful discrimination is found. The division will provide written notice of such dismissal to complainant and respondent.

(5) The division cannot issue a finding of substantial evidence of discrimination once complainant has filed a civil suit alleging the same matters as provided in OAR 839-003-0235, and the trial for the civil suit has commenced.

(6) The division will dismiss complaints alleging discrimination under federal housing law statutes administered by HUD in accordance with federal requirements.

(7) The division will notify the complainant in writing of the right to file suit in state court, as provided in ORS 659A.870 to 659A.885, when a complaint is dismissed by the division. A complainant filing suit against a public body must also file a tort claim notice as required by ORS 30.275.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 30.680, 659A.145, 659A.421, 659A.835, 659A.850 & 659A.870 - 659A.885
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0220

Housing Discrimination Investigations

(1) The division will investigate the allegations contained in any complaint filed under ORS 659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law to determine objectively whether there is substantial evidence of unlawful discrimination. The division will determine the method by which complaints will be investigated or otherwise processed. The division will not investigate allegations occurring more than one year prior to the date the complaint was filed unless the allegations constitute a continuing violation or the circumstances occurring more than one year prior to the date the complaint was filed pertain to timely allegations.

(2) The division will commence an investigation of any complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law within 30 days after the timely filing of the complaint.

(3)(a) At the end of each investigation of a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law the division will prepare a final investigative report containing:

(A) The names and dates of the contacts with witnesses;

(B) A summary and the dates of correspondence and other contacts with the complainant and the respondent;

(C) A summary description of other pertinent records;

(D) A summary of witness statements; and

(E) Answers to interrogatories.

(b) A final investigative report under this section may be amended if additional evidence is later discovered.

(c) The division will make the final investigative report available, upon request, to both the complainant and the respondent.

(4) The division will complete an investigation of any complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law within 100 days after the filing of the complaint, unless it is impracticable to do so.

(a) If the division is unable to complete the investigation of the complaint within 100 days after the filing of the complaint the division will notify the complainant and respondent in writing of the reasons for not doing so.

(5) The division will make final disposition of any complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law within one year after the filing of the complaint, unless it is impracticable to do so.

(a) If the division is unable to make final disposition of the complaint within one year the division will notify the complainant and respondent in writing of the reasons for not doing so.

(6) If the division determines that it is impracticable to complete an investigation and make final disposition of any complaint within one year the commissioner's authority to conduct investigations or other proceedings to resolve a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law does not cease within the one year period under ORS 659A.830(3).

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.145, 659A.421, 659A.800, 659A.805, 659A.835 & 659A.870 - 659A.885
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0225

Settlement Process After Substantial Evidence Determination in Housing Discrimination Complaints

(1) During the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the division, the division will, to the extent feasible, seek to eliminate the effects of the unlawful discriminatory act(s) by engaging in conciliation, settlement and persuasion. The division will facilitate any settlement negotiations between the complainant and respondent as provided in OAR 839-003-0055.

(2) Nothing said or done in the course of settlement discussions concerning a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law may be disclosed under ORS 192.410 to 192.505 or in any other manner, or used as evidence in a subsequent proceeding under this chapter or federal housing law, without the written consent of the persons concerned.

(3) If no settlement agreement is reached in the period of time set aside for settlement after a Substantial Evidence Determination, the division will proceed to a contested case hearing.

(4) The complainant may withdraw the complainant's own complaint at any time.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.145, 659A.421, 659A.835, 659A.840
Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0230

Remedies in Housing Discrimination Complaints

(1) In cases of housing discrimination remedy includes, but is not limited to:

(a) Rental, lease or sale of real property;

(b) Service lost;

(c) Expenses or lost benefits attributable to the practice;

(d) Compensation for emotional distress and for impaired personal dignity; and

(e) Interest.

(2) Settlements of complaints and the awards in commissioner's Final Orders do not necessarily include all possible remedies named in sections (1) of this rule. Nothing in this rule will be construed to limit or alter the statutory powers of the commissioner to protect the rights of persons similarly situated to the complainant or to order the performance of an act or a series of acts designed to eliminate the effect of any unlawful practice found.

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(3) The commissioner may order the respondent to eliminate the effects of any unlawful practice found and may require respondent to do one or more of the following:

(a) Perform a designated act or series of acts that are calculated to carry out the policy of these rules in order to eliminate the effects of an unlawful practice and to protect the rights of those affected;

(b) Take action and submit reports to the commissioner on the manner of compliance with the terms and conditions specified in the commissioner's order or agreement;

(c) Refrain from any action prohibited by the order or agreement that would jeopardize the rights of the individuals or groups named in the complaint or would frustrate the purpose and the policy of these rules and relevant statutes.

(4) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by suit in equity to compel specific performance.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.145, 659A.421, 659A.800, 659A.850, 659A.860, 659A.865 & 659A.885

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0235

Civil Suit

(1) A person alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law may file a civil suit as provided in ORS 659A.870 to 659A.885, or 30.680.

(a) A person is not required to file a complaint of a violation of state law with the division before filing a civil suit.

(2) A civil suit alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, may be filed no later than two years after the occurrence or termination of an alleged discriminatory housing practice, or within two years after the breach of any settlement agreement entered into under ORS 659A.840, whichever occurs last. The two-year period may not include any time during which an administrative proceeding was pending with respect to the housing practice.

(3) After filing a complaint with the division, a complainant may file a civil suit in state or federal court alleging the same matters as those alleged in the complaint filed with the division. The complainant should notify the division of the civil suit. When the division receives notice from the complainant or complainant's attorney, or court documents indicating that such a suit has been filed the division will not dismiss the complaint until the civil trial commences. The division will notify the complainant and respondent that the division has dismissed the complaint and will take no further action.

(4) If Formal Charges have been issued with respect to a housing discrimination complaint, and an administrative law judge has commenced a hearing on the record under ORS chapter 659A, the complainant may not commence a civil action in court that alleges the same matters.

(5) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved individuals in the same manner as an individual or group of individuals may file a civil action under ORS 659A.885.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 30.275, 30.680, 659A.001 - 659A.030, 659A.145, 659A.150 - 659A.224, 659A.233, 659A.303, 659A.409, 659A.420, 659A.421, & 659A.800 - 659A.890

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0240

Enforcement of Settlement Agreements and Orders in Housing Discrimination Complaints

(1) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by suit in equity to compel specific performance, as provided in ORS 659A.860.

(2) If the complainant believes the terms of a bureau settlement agreement have been breached, the complainant may file a complaint with the division alleging retaliation, or file a new complaint re-alleging the original violation if it is still occurring. The division will review the provisions of the settlement agreement and investigate.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.145, 659A.421, 659A.850, 659A.860, 659A.865

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-003-0245

Commissioner's Complaint

(1) The Commissioner of the Bureau of Labor and Industries may make, sign and file a complaint whenever the commissioner has reason to believe that any person or group of persons has been denied rights or is about to be denied rights due to an unlawful practice under ORS 659A.145 or 659A.421 or federal housing law. The complaint will be processed in the same manner as any other complaint filed under OAR 839-003-0200.

(2) In the matter of concurrent complaints, nothing in these rules will be construed to:

(a) Require or prohibit the filing of a commissioner's complaint involving the same or similar issues or allegations stated in any other complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885;

(b) Require or prohibit the continued processing or initiation of a commissioner's complaint in the event that a complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885, is resolved or dismissed, with or without remedy to the individual; or

(c) Alter or limit an individual's private right of action provided under ORS 659A.870 to 659A.885.

Stat. Auth.: ORS 183, 659A.805

Stats. Implemented: ORS 659A.145, 659A.421, 659A.820, 659A.825, 659A.870 - 659A.885

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-005-0000

Purpose and Scope

(1) It is the policy of the State of Oregon that unlawful discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status, age, disability and other classes protected under Oregon statutes is a matter of state concern and that such discrimination threatens individual rights and privileges and menaces the institutions and foundations of a free democratic state.

(2) Prohibited discrimination is a basis of unlawful practices and unlawful employment practices described in ORS chapter 659A and other chapters of the Oregon statutes.

(3) The Civil Rights Division of the Bureau of Labor and Industries is responsible for protecting individual rights through the enforcement of civil rights statutes prohibiting unlawful practices and unlawful employment practices over which the bureau has jurisdiction.

(4) The purpose of these rules is to implement, interpret and describe the division's approach to civil rights enforcement under the bureau's jurisdiction.

(5) These rules apply to all inquiries and complaints received by the division on or after the effective date of these rules.

(6) An individual claiming a violation of the civil rights statutes may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025 or 839-003-0200 for complaints alleging housing discrimination filed under ORS 659A.145, 659A.421 or federal housing law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A

Hist.: BL 9-1982, f. & ef. 6-11-8; BL 4-1996, f. & cert. ef. 3-12-96; BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-005-0003

Definitions

As used in enforcing ORS Chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law.

(1) "Bureau" means the Bureau of Labor and Industries.

(2) "Complainant" means an individual who files a complaint with the division, personally or through the individual's attorney, pursuant to the guidelines provided in OAR 839-003-0025 or 839-003-0200 for complaints alleging housing discrimination filed under ORS 659A.145, 659A.421 or federal housing law.

(3) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.

(4) "Employee" does not include any individual employed by that individual's parents, spouse or child or in the domestic service of any person.

(5) "Employer" means any person in this state who, directly or through an agent, engages or utilizes the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed. Employer also includes any public body that, directly or through an agent, engages or utilizes the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed, including all officers, agencies, depart-

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ments, divisions, bureaus, boards and commissions of the legislative, judicial and administrative branches of the state, all county and city governing bodies, school districts, special districts, municipal corporations and all other political subdivisions of the state.

(6) "Person" includes one or more individuals, partnerships, associations, labor organizations, limited liability companies, joint-stock companies, corporations, legal representatives, trustees, and trustees in bankruptcy or receivers. "Person" also includes a public body as defined in ORS 30.260. For the purposes of ORS 659A.145 or 659A.421 or federal housing law, "person" also includes fiduciaries, mutual companies, trusts and unincorporated organizations.

(7) "Employment agency" includes any person undertaking to procure employees or opportunities to work.

(8) "Labor organization" includes any organization that is constituted for the purpose, in whole or in part, of collective bargaining or in dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

(9) "Protected class" means a group of people protected by law from discrimination on the basis of a shared characteristic, such as race, sex, sexual orientation, disability, or other, or a perception of that characteristic.

(10) "Respondent" includes any person against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(11) "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 assigned sex at birth.

(12) "Gender identity" means an individual's gender-related identity, whether or not that identity is different from that traditionally associated with the individual's assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous.

(13) "Gender expression" means the manner in which an individual's gender identity is expressed, including, but not limited to, through dress, appearance, manner, or speech, whether or not that expression is different from that traditionally associated with the individual's assigned sex at birth.

(14) "Sex" means the anatomical, physiological and genetic characteristics associated with being male or female.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A, OL 2007 Ch 100

Hist.: BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-005-0010

Discrimination Theories

As used in enforcing ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law.

(1) Substantial evidence of intentional unlawful discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(10) of these rules;

(b) The complainant is a member of a protected class;

(c) The complainant was harmed by an action of the respondent; and

(d) The complainant's protected class was the reason for the respondent's action. In determining whether the complainant's protected class was the reason for the respondent's action, the division uses whichever of the following theories applies:

(A) Specific Intent Theory: The respondent knowingly and purposefully discriminates against an individual because of that individual's membership in a protected class. Unless the respondent can show that a bona fide occupational qualification or a bona fide voluntary, court-ordered affirmative action plan (OAR 839-005-0045) allows the action.

(B) Different or Unequal Treatment Theory: The respondent treats members of a protected class differently than others who are not members of that protected class. When the respondent makes this differentiation because of the individual's protected class and not because of legitimate, non-discriminatory reasons, unlawful discrimination exists. In establishing a case of different or unequal treatment:

(i) There must be substantial evidence that the complainant was harmed by an action of the respondent under circumstances that make it appear that the respondent treated the complainant differently than comparably situated individuals who were not members of the complainant's protected class. Substantial evidence of discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support that protected class membership was the reason for the

respondent's alleged unlawful action. If the respondent fails to rebut this evidence with evidence of a legitimate non-discriminatory reason, the division will conclude that substantial evidence of unlawful discrimination exists.

(I) Pretext: If the respondent rebuts the evidence with evidence of a legitimate non-discriminatory reason, but there is substantial evidence that the respondent's reason is a pretext for discrimination, the division will conclude there is substantial evidence of unlawful discrimination.

(II) Mixed Motive: If the respondent presents substantial evidence that a legitimate, non-discriminatory reason contributed to the respondent's action, but the division finds the individual's protected class membership was also a substantial factor in the respondent's action, the division will determine there is substantial evidence of discrimination.

(ii) The complainant at all times has the burden of proving that the complainant's protected class was the reason for the respondent's unlawful action.

(e) For the purposes of housing discrimination complaints filed under ORS 659A.145 or 659A.421 or discrimination under federal housing law, a complainant need not be a member of a protected class. Substantial evidence in complaints of housing discrimination exists when the division's investigation reveals, based on the totality of circumstances known at the time of the decision, that a reasonable person would accept as sufficient to believe that a discriminatory housing practice has occurred or is about to occur.

(2) Adverse Impact Discrimination: Substantial evidence of adverse impact discrimination does not require establishment of intentional discrimination as provided in (1) of this rule. Adverse impact discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(10) of these rules;

(b) The respondent has a standard or policy that is applied equally.

(c) The standard or policy has the effect of screening out or otherwise affecting members of a protected class at a significantly higher rate than others who are not members of that protected class; and

(d) The complainant is a member of the protected class adversely affected by the respondent's standard or policy and has been harmed by the respondent's application of the standard or policy.

(e) For the purposes of housing discrimination complaints filed under ORS 659A.145 or 659A.421 or discrimination under federal housing law, a complainant need not be a member of a protected class. Substantial evidence in complaints of housing discrimination exists when the division's investigation reveals, based on the totality of circumstances known at the time of the decision, that a reasonable person would accept as sufficient to believe that a discriminatory housing practice has occurred or is about to occur.

(3) For the purposes of housing discrimination complaints filed under ORS 659A.145 or 659A.421 or discrimination under federal housing law, in determining whether evidence of adverse impact discrimination exists and, if so, what relief should be granted, a court or the commissioner will consider:

(a) The significance of the adverse impact on the protected class;

(A) For the purposes of housing discrimination complaints filed under ORS 659A.145 or 659A.421 or discrimination under federal housing law, a complainant need not be a member of a protected class.

(b) The importance and necessity of any business purpose for the standard or policy; and

(c) The availability of less discriminatory alternatives for achieving the business purpose for the standard or policy.

(4) Discrimination based on disability may involve intentional discrimination, including harassment, or discrimination that need not be intentional, including adverse impact, or the failure to permit reasonable modifications, the refusal to make reasonable accommodations or the failure to design and construct covered buildings under applicable rules. To be protected from discrimination based on disability, an individual must have a disability, as defined in ORS 659A.100(1) and (2) and the relevant rules. Reasonable accommodation for purposes of employment is defined in ORS 659A.118 and OAR 839-006-0206. Reasonable accommodation in real property transactions is covered by ORS 659A.145 and OAR 839-005-0220. Reasonable modifications in services, programs or activities, provision of auxiliary aids, services by state government, removal of barriers to facilities, goods and services and provision of auxiliary aids by public accommodations are covered by ORS 659A.142 and OAR 839-006-0310 to 0330. Reasonable modifications in housing and the design and construction of covered buildings are covered by ORS 659A.145. Claims of disability

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discrimination brought under federal housing law are defined under that law.

(5) An employer must reasonably accommodate an employee or applicant's religious belief, observance or practice unless the employer can demonstrate that such accommodation would cause undue hardship on the employer's business.

(6) Harassment in employment based on an individual's protected class is a type of intentional unlawful discrimination. In cases of alleged unlawful sexual harassment in employment see OAR 839-005-0030.

(a) Conduct of a verbal or physical nature relating to protected classes other than sex is unlawful when substantial evidence of the elements of intentional discrimination, as described in section (1) of this rule, is shown and:

(A) Such conduct is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment;

(B) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or

(C) Submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.

(b) The standard for determining whether harassment is sufficiently severe or pervasive to create a hostile, intimidating or offensive working environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.

(c) Employer Proxy: An employer is liable for harassment when the harasser's rank is sufficiently high that the harasser is the employer's proxy, for example, the employer's president, owner, partner or corporate officer.

(d) Harassment by Supervisor plus Tangible Employment Action: An employer is liable for harassment by a supervisor with immediate or successively higher authority over an individual when the harassment results in a tangible employment action that the supervisor takes or causes to be taken against the individual. A tangible employment action includes, but is not limited to, any of the following:

(A) Terminating employment, including constructive discharge;

(B) Failing to hire;

(C) Failing to promote; or

(D) Changing a term or condition of employment, such as work assignment, work schedule, compensation or benefits or making a decision that causes a significant change in an employment benefit.

(e) Harassment by Supervisor, No Tangible Employment Action: When harassment by a supervisor with immediate or successively higher authority over the individual is found to have occurred, but no tangible employment action was taken, the employer is liable if:

(A) The employer knew of the harassment, unless the employer took immediate and appropriate corrective action.

(B) The employer should have known of the harassment. The division will find that the employer should have known of the harassment unless the employer can demonstrate:

(i) That the employer exercised reasonable care to prevent and promptly correct any harassing behavior; and

(ii) That the complaining individual unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm.

(f) Harassment by Coworkers or Agents: An employer is liable for harassment by the employer's employees or agents who do not have immediate or successively higher authority over the complaining individual when the employer knew or should have known of the conduct, unless the employer took immediate and appropriate corrective action.

(g) Harassment by Non-Employees: An employer is liable for harassment by non-employees in the workplace when the employer or the employer's agents knew or should have known of the conduct unless the employer took immediate and appropriate corrective action. In reviewing such cases, the division will consider the extent of the employer's control and any legal responsibility the employer may have with respect to the conduct of such non-employees.

(h) Withdrawn Consent: An employer may be liable for harassment by the employer's supervisory or non-supervisory employees, agents or non-employees even if the acts complained of were of a kind previously consented to by the complaining individual, if the employer knew or should have known that the complaining individual had withdrawn consent to the offensive conduct.

(i) When employment opportunities or benefits are granted because of an individual's submission to an employer's harassment, the employer is liable for unlawful discrimination against other individuals who were qual-

ified for but denied that opportunity or benefit.

(7) Harassment in Housing and Public Accommodations: Harassment on the basis of a protected class, including sexual harassment, is an unlawful practice in housing and in places of public accommodation when:

(a) Substantial evidence of the elements of OAR 839-005-0010(1) is shown; and

(b) Such conduct has the purpose or effect of creating an intimidating, hostile or offensive environment. The standard for determining whether harassment in housing and in places of public accommodation creates an intimidating, hostile or offensive environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A & 42 U.S.C. 3601 et seq.

Hist.: BL 9-1982, f. & ef. 6-11-82; BL 4-1996, f. & cert. ef. 3-12-96; BLI 6-1998, f. & cert. ef. 10-22-98; BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 3-2007, f. 1-29-07, cert. ef. 2-2-07; BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-005-0016

Exceptions to Discrimination Based on Sexual Orientation

(1) The following actions are not unlawful practices under ORS Chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law:

(a) Housing and the use of facilities. It is not an unlawful practice for a bona fide church or other religious institution to take any action with respect to housing or the use of facilities when:

(A) The action taken is based on a bona fide religious belief about sexual orientation; and

(B) The housing or the use of facilities involved is closely connected with or related to the primary purpose of the church or institution; and

(C) The housing or the use of facilities involved is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(b) Employment Preference. It is not an unlawful employment practice for a bona fide church or other religious institution, including but not limited to a school, hospital or church camp, to prefer an employee, or an applicant for employment, of one religious sect or persuasion over another if:

(A) The employee or applicant belongs to the same religious sect or persuasion as the church or institution; and

(B) In the opinion of the church or institution, the preference will best serve the purposes of the church or institution; and

(C) The employment involved is closely connected with or related to the primary purposes of the church or institution; and

(D) The employment involved is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(c) Employment Actions. It is not an unlawful employment practice for a bona fide church or other religious institution to take any employment action based on a bona fide religious belief about sexual orientation when:

(A) The employment position involved is directly related to the operation of the church or other place of worship, such as clergy, religious instructors and support staff;

(B) The employment position involved is in a nonprofit religious school, nonprofit religious camp, nonprofit religious day care center, nonprofit religious thrift store, nonprofit religious bookstore, nonprofit religious radio station or nonprofit religious shelter; or

(C) The employment position involves religious activities, as long as the employment position:

(i) Is closely connected with or related to the primary purpose of the church or institution; and

(ii) Is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(d) Dress Code. An employer is not prohibited from enforcing an otherwise valid dress code or policy, as long as the employer provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual.

(2) The above exceptions do not excuse a failure to provide reasonable and appropriate accommodations permitting all persons access to restrooms consistent with their expressed gender.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A, OL 2007 Ch 100

Hist.: BLI 35-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

ADMINISTRATIVE RULES

839-005-0026

Protections and Rights Relating to Pregnancy

(1) Pregnant women are protected from sex discrimination in employment.

(2) In judging the physical ability of an individual to work, pregnant women must be treated the same as males, non-pregnant females and other employees with off-the-job illnesses or injuries.

(3) The statutes prohibit discrimination regarding employee and dependent spouse or domestic partner benefits for pregnancy when employee and dependent spouse or domestic partner benefits exist for other medical conditions. Domestic Partnership for the purposes of chapter 659A means two individuals who have received a Certificate of Registered Domestic Partnership from the State of Oregon in compliance with Oregon Laws, 2007, Chapter 99 and rules adopted by the State Registrar of the Center for Health Statistics.

(4) Women needing to be absent from work because of pregnancy or childbirth may have rights under the Oregon Family Leave Act, as provided in ORS 659A.150 to 659A.186 and OAR 839-009-0200 to 839-009-0320.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.029, 659A.030, 659A.150- 659A.186, OL 2007 Ch 99

Hist.: BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 35-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-005-0195

Purpose and Scope

(1) The public policy of the State of Oregon guarantees all persons the fullest possible participation in the social and economic life of the state, including the right to purchase, lease, rent or occupy property without discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes. The Bureau of Labor and Industries, through the Civil Rights Division, protects these rights by enforcement of ORS 659A.145, 659A.421 and the Fair Housing Act (42 U.S.C. 3601 et seq.) for which the U.S. Department of Housing and Urban Development has jurisdiction.

(2) A person claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law may file a complaint with the Civil Rights Division as described in OAR 839-003-0200.

(a) A person claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law includes a person who believes that the person has been injured by an unlawful practice or discriminatory housing practice or will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(3) These rules apply to all complaints and inquiries relating to these sections received on or after the effective date of these rules.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et seq.

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-005-0200

Definitions

(1) "Disabled Person" means a person with 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) "Dwelling" means any building, structure, or portion of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location of any such building, structure, or portion of such a building or structure. "Family" includes a single individual.

(3)(a) "Familial status" means the relationship between one or more individuals who have not attained 18 years of age and who are domiciled with:

(A) A parent or another person having legal custody of the individual; or

(B) The designee of the parent or other person having such custody, with the written permission of the parent or other person.

(b) "Familial status" includes any individual, regardless of age or domicile, who is pregnant or is in the process of securing legal custody of an individual who has not attained 18 years of age.

(4) "Federal Housing Law" means The Fair Housing Act (42 U.S.C. 3601 et seq.) for which the U.S. Department of Housing And Urban Development has jurisdiction.

(5) "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.

(a) 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.

(b) To be substantially limited in the major life activity of working, a person must be significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes as compared to the ability of an average person with comparable skill, experience, education or other job-related requirements needed to perform those same positions.

(6) "Misclassified," as used in ORS 659A.100(2)(b), means an erroneous or unsupported medical diagnosis, report, certificate or evaluation.

(7) "Person associated with a purchaser," as used in ORS 659A.145(1), includes one or more individuals, partnerships, associations, labor organizations, limited liability companies, joint stock companies, corporations, legal representatives, trustees, trustees in bankruptcy or receivers, fiduciaries, mutual companies, trusts and unincorporated organizations and public bodies as defined in ORS 30.260 that have the primary purpose of serving, representing or otherwise benefiting the protected class.

(8) "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, genito-urinary, 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.

(9) "Property" and "real property" means property used or intended for commercial, business or residential purposes including, but not limited to a dwelling.

(10) "Purchaser" includes an occupant, prospective occupant, renter, prospective renter, lessee, prospective lessee, buyer or prospective buyer.

(11) "Receipt or alleged receipt of treatment for a mental disorder," as used in ORS 659A.142(5), means actual treatment of a person for a mental condition or an assertion that the person received such treatment.

(12) "Regarded as having an impairment," as used in ORS 659A.100(2)(c), means:

(a) A person having a physical or mental impairment that does not substantially limit a major life activity but who has been treated as having an impairment by a seller, lessor, advertiser, real estate broker or salesperson, or the agent of any seller, lessor, advertiser, real estate broker or salesperson;

(b) A person having a physical or mental impairment that substantially limits a major life activity only as a result of the attitude of others toward such impairment; or

(c) A person having no physical or mental impairment but who is treated as having an impairment by a seller, lessor, advertiser, real estate broker or salesperson, or the agent of any seller, lessor, advertiser, real estate broker or salesperson.

(13) "Residential real estate related transaction" means any of the following:

(a) The making or purchasing of loans or providing other financial assistance:

(A) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

(B) Secured by residential real estate; or

(b) The selling, brokering or appraising of residential real property.

(14) "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.

(15) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(16) "Treatment" includes examination, evaluation, diagnosis and therapy by a health professional within the scope of the professional's applicable license.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et seq. OL 2007 Ch. 100

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

ADMINISTRATIVE RULES

839-005-0205

Prohibited Discrimination

(1) A person may not, because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes of any person:

- (a) Refuse to sell, lease or rent any real property to a purchaser;
- (b) Expel a purchaser from any real property;

(c) Make any distinction, discrimination or restriction against a purchaser in price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or in the furnishing of any facilities or services in connection with real property;

(d) Attempt to discourage the sale, rental, lease or occupancy of any real property to a purchaser;

(e) Publish, circulate, issue or display or cause to be published, circulated, issued or displayed, any communication, notice, advertisement, or sign of any kind whether oral, written or electronic, relating to the sale, rental or leasing of real property that indicates any preference, limitation, specification or unlawful discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes;

(f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates ORS 659A.145, 659A.421, Federal Housing Law or these rules;

(g) Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by ORS 659A.145, 659A.421, federal housing law or these rules;

(h) Deny access to, or membership or participation in, any multiple listing service, real estate broker's organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against any person in the terms or conditions of the access, membership or participation;

(i) Represent to a person that a dwelling is not available for inspection, sale, rental or lease when the dwelling in fact is available for inspection, sale, rental or lease;

(j) Otherwise make unavailable or deny a dwelling to a person.

(2) A person whose business includes engaging in residential real estate related transactions may not discriminate against any person in making a transaction available, or in the terms or conditions of the transaction, because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(3) A real estate licensee may not accept or retain a listing of real property for sale, lease or rental with an understanding that a purchaser may be discriminated against with respect to the sale, rental or lease thereof because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(4) A person may not, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(5) For purposes of OAR 839-005-0205 subsections (1) to (4), "source of income" does not include federal rent subsidy payments under 42 U.S.C. 1437f, income from specific occupations or income derived in an illegal manner.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et seq.

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

839-005-0220

Disabled Persons

(1) Persons protected from discrimination on the basis of disability in real property transactions include any disabled person associated with a purchaser.

(2) In addition to the prohibitions in OAR 839-005-0205, discrimination in real property transactions based on a person's disability includes, but is not limited to:

(a) Refusing to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of rental, the landlord

may, where it is reasonable to do so, condition permission for modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(A) In the case of a rental, a disabled renter is only required to restore the interior premises to the condition that existed before the modification when the landlord required restoration as a condition to granting the disabled renter's reasonable modification request.

(b) Refusing to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling and;

(c) Failure to design and construct a covered multifamily dwelling as required by the Fair Housing Act (42 U.S.C. 3601 et seq.).

(3) Just Cause. A lessor or agent may engage in conduct otherwise prohibited by ORS 659A.145 when:

(a) A disabled person's leasing or rental of the subject property would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others; and

(b) No reasonable accommodation is possible that would eliminate or acceptably minimize the risk to health and safety.

(4) A lessor or agent must allow alterations of existing premises if the premises are occupied by or to be occupied by a disabled person, and the disabled person pays for the alterations, as provided in OAR 839-005-0220(2).

(5) There is no just cause for discrimination on the basis of perceived disability.

(6) Receipt or alleged receipt of treatment for a mental disorder does not constitute evidence of an individual's inability to acquire, rent or maintain property.

(7) In the sale, lease or rental of real estate, a person may not disclose to any person that an occupant or owner of real property has or died from human immunodeficiency virus or acquired immune deficiency syndrome.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, 659A.142 & 659A.145, 659A.421 & 42 U.S.C. 3601 et seq.

Hist.: BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08

Rule Caption: Amends the prevailing rates of wage for the period beginning January 1, 2008.

Adm. Order No.: BLI 8-2008

Filed with Sec. of State: 3-31-2008

Certified to be Effective: 4-1-08

Notice Publication Date:

Rules Amended: 839-025-0700

Subject: The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 1, 2008.

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

839-025-0700

Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated 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).

ADMINISTRATIVE RULES

(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).

(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

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Rule Caption: Amends the prevailing rates of wage for the period beginning January 1, 2008.

Adm. Order No.: BLI 9-2008

Filed with Sec. of State: 4-14-2008

Certified to be Effective: 4-14-08

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).

(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

ADMINISTRATIVE RULES

Construction Contractors Board Chapter 812

Rule Caption: Modifying requirements for license application information—corporate officer identifiers.

Adm. Order No.: CCB 6-2008

Filed with Sec. of State: 3-24-2008

Certified to be Effective: 3-24-08

Notice Publication Date: 3-1-2008

Rules Amended: 812-003-0260

Subject: OAR 812-003-0260(1)(c)(E) is amended to exempt small-, mid-, large- and mega-cap companies from the requirement that they provide identifiers for their many corporate officers.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-003-0260

Application for New License

(1) Each entity must complete an application form prescribed by the agency. Information provided on the form must include, but not be limited to:

(a) Name of business entity, all additional business names, including assumed business names, under which business as a contractor is conducted, and Corporation Division registry numbers (if applicable);

(b) Mailing and location address of the business entity;

(c) Legal name, date of birth and driver license number of:

(A) The owner of a sole proprietorship;

(B) All partners of a general partnership or limited liability partnership;

(C) All joint venturers of a joint venture;

(D) All general partners of a limited partnership;

(E) For corporations with a market capitalization of less than \$300 million, all corporate officers of a corporation;

(F) All trustees of a trust;

(G) The manager and all members of a manager-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph;

(H) All members of a member-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph; or

(I) The responsible managing individual designated by the applicant.

(d) Social security number of the owner of a sole proprietorship or partners, if partners are human beings, in a general partnership;

(e) Class of independent contractor license and employer account numbers as required under OAR 812-003-0250;

(f) License endorsement sought, as provided for under OAR 812-003-0131;

(g) The identification number of the responsible managing individual who has completed the education and passed the examination required under ORS 701.122 or is otherwise exempt under Division 6 of these rules;

(h) The Standard Industrial Classification (SIC) numbers of the main construction activities of the entity;

(i) Names and certification numbers of all certified home inspectors if the entity will do work as a home inspector under ORS 701.350;

(j) For each person described in subsection (1)(c) of this section, the following information if related to construction activities:

(A) If unsatisfied on the date of application, a copy of a final judgment by a court in any state entered within five years preceding the application date that requires the person to pay money to another person or to a public body;

(B) If unsatisfied on the date of application, a copy of a final order by an administrative agency in any state issued within five years preceding the application date that requires the person to pay money to another person or public body;

(C) If pending on the date of application, a copy of a court complaint filed in any state that alleges that the person owes money to another person or public body; or

(D) If pending on the date of application, a copy of an administrative notice of action issued in any state that alleges that the person owes money to another person or public body.

(k) For each person described in subsection (1)(c) of this section, the following information if related to construction activities;

(A) A copy of a judgment of conviction for a crime listed in ORS 701.098(1)(h), entered within five years preceding the application date; or

(B) A copy of an indictment for a crime listed in ORS 701.098(1)(h), entered within five years preceding the application date.

(C) In addition to documents required in paragraphs (1)(k) (A) and (B) of this section, copies of police reports, parole or probation reports indicating parole or probation officer's name and phone number, and letters of reference.

(I) Independent contractor certification statement and a signed acknowledgment that if the licensee qualifies as an independent contractor the licensee understands that the licensee and any heirs of the licensee will not qualify for workers' compensation or unemployment compensation unless specific arrangements have been made for the licensee's insurance coverage and that the licensee's election to be an independent contractor is voluntary and is not a condition of any contract entered into by the licensee;

(m) Signature of owner, partner, joint venturer, corporate officer, member or trustee, signifying that the information provided in the application is true and correct; and

(2) A complete license application includes but is not limited to:

(a) A completed application form as provided in section (1) of this rule;

(b) The new application license fee as required under OAR 812-003-0140;

(c) A properly executed bond, letter of credit or assignment of savings as required under OAR 812-003-0152, 812-003-0153, or 812-003-0155; and

(d) The certification of insurance coverage as required under OAR 812-003-0200.

(3) The agency may return an incomplete license application to the applicant with an explanation of the deficiencies.

(4) All entities listed in section (1) of this rule that are otherwise required to be registered with the Oregon Corporation Division must be registered with the Oregon Corporation Division and be active and in good standing. All assumed business names used by persons or entities listed in section (1) of this rule must be registered with the Oregon Corporation Division as the assumed business name of the person or entity using that name.

Stat. Auth.: ORS 670.310, 701.235

Stats. Implemented: ORS 25.270, 25.785, 25.990, 701.035, 701.050, 701.056, 701.068, 701.073, 701.081, 701.088, 701.122

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 8-2006, f. & cert. ef. 9-5-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 6-2007, f. 8-29-07, cert. ef. 9-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 6-2008, f. & cert. ef. 3-24-08

Department of Administrative Services Chapter 125

Rule Caption: Rules for Statewide Facility Planning Process.

Adm. Order No.: DAS 3-2008(Temp)

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 4-15-08 thru 10-12-08

Notice Publication Date:

Rules Adopted: 125-125-0500, 125-125-0600

Rules Amended: 125-125-0050, 125-125-0100, 125-125-0150, 125-125-0250, 125-125-0300, 125-125-0350, 125-125-0400

Subject: These rules provide a process for developing, planning and evaluating projects engaged in capitol construction or improvement including those covered by the Capitol Mall Area Plan. Amendments are primarily housekeeping changes to improve clarity and update references. OAR 125-125-0500 adopts the Area Plan Review, Adoption, Amendment and Repeal Process. OAR 125-125-0600 adopts the rules for obtaining copies of records.

Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

125-125-0050

Purpose, Application, and Authority

These rules are adopted under ORS 276.227. They set forth the statewide facility planning process for state agencies and the duties of the Board, which assists the Department with the planning process. State agencies other than institutions of higher education are required to provide information about their facilities and projects to the Department.

ADMINISTRATIVE RULES

Additionally, they implement a planning and review process for facilities and projects within the area described in ORS 276.028.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

125-125-0100

Definitions

As used in these rules, the following terms have the meanings indicated, unless the context requires otherwise:

(1) "Area Plan" means a plan for development in one of the specified geographical areas described in ORS 276.028.

(2) "Biennial Leasing Plan" means a summary of all continuing leases or changes in leasing activity proposed for the coming biennium. This will summarize agency leasing activities or requests and provide a context for individual leasing plans.

(3) "Board" means the Capital Projects Advisory Board appointed under ORS 276.227(3), which is advisory to the Director of the Department.

(4) "Building Maintenance Plan" means a plan to be completed by an agency that owns a building valued at \$1 million or greater.

(5) "Committee" means the Capitol Mall Project Review Committee, which reviews projects on the Capitol Mall for compliance with the Capitol Mall Area Plan standards and policy.

(6) "Department" means the Department of Administrative Services.

(7) "Director" means the Director of the Department of Administrative Services.

(8) "Leasing Project Plan" means a proposed new lease, business case and cost benefit analysis completed by state agencies that lease or plan to lease a site with 10,000 or more square feet of conditioned space for a term of ten years or more.

(9) "Construction Project Plan" means a plan to be completed for each major capital construction project of \$500,000 or more that a state agency is anticipating within the next three biennia which is either new construction or adds area to an existing facility.

(10) "Space Needs Plan" means a plan to be completed by state agencies that own or plan to build or buy a building with 10,000 or more square feet; lease or plan to lease a site with 10,000 or more square feet of conditioned space for a term of ten years or more; plan to seek any legislative or Emergency Board approval for a major construction, acquisition or leasing project; or plan to seek planning funds for a project that is anticipated to cost more than \$500,000 over the next three biennia. The Space Needs Plan includes the Biennial Leasing Plan.

(11) "Statewide Program" means a program of the Facilities Division of the Department of Administrative Services that implements OAR 125-125-0050 to 125-125-0600.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

125-125-0150

Statewide Facility Planning Process

(1) The statewide facility planning process provides a means of evaluating if state facilities are planned, financed, acquired, constructed, managed, and maintained in a manner that maximizes and protects this investment.

(2) The described budget review process program does not apply to institutions of higher education, community colleges, Oregon Health Sciences University, SAIF Corporation, Lottery, Secretary of State, Treasurer's Office, or to the Legislative or Judicial branches.

(3) The Department shall implement and maintain a planning process. This process shall coordinate state facilities' data, standards, maintenance planning, leasing planning, capital project planning, Salem Area Projects planning and Capitol Mall Area Projects Planning. The Department shall use the Board to assist in the review of agency plans and other associated documents and to advise the Director.

(4) The Statewide Facilities Program shall develop the State Facilities Planning Process Manual. The manual shall provide definitions, examples, and detailed descriptions of required reports to aid agencies in supplying information to the Statewide Program. The manual shall be reviewed biennially before the budget process begins and updated, if needed.

(5) Following the guidelines contained in the State Facilities Planning Process Manual, Agencies shall submit a State Facility Plan through the

statewide facilities coordinator if it meets one or more of the following criteria:

(a) The agency owns buildings or plans to build or buy a building of 10,000 or more square feet;

(b) The agency plans a major re-organization;

(c) The agency proposes to enter into a lease of 10,000 or more square feet of conditioned space for a period of ten years or more;

(d) The agency proposes to request a budget to construct a major capital project;

(e) The agency plans to seek a legislative or Emergency Board approval for a major construction or acquisition project;

(f) The agency plans to seek planning funds for a major construction or acquisition project for which the total cost will be \$500,000 or more.

(6) To best coordinate and distribute the facilities data, the Statewide Program shall maintain a State Facility Inventory. The inventory shall be a database of state agency facilities covered under this rule and valued over \$1 million, which shall be updated biennially by agencies. The inventory shall include basic information on these buildings, such as the age, roof replacement schedule, deferred maintenance plan, etc. The data shall be used to make effective decisions on capital projects, space needs, and maintenance of the buildings.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

125-125-0250

Procedure for Submitting Reports for Review

(1) Each state agency shall report to the Board by July 31 of even-numbered years long-range facility plans and funding strategies that reflect changes in technology and priorities. The reports shall include a Space Needs Plan (including the Biennial Leasing Plan), a Construction or Lease Project Plan, and a Building Maintenance Needs Plan, if applicable.

(2) The Board shall review the information submitted and presented under section (1) of this rule and make recommendations to the Director by September 1 of even-number years related to long-range plans, the condition of facilities, maintenance schedules, funding strategies and options for new facilities.

(3) The statewide facilities coordinator shall request updated plans from agencies biennially and establish a submittal schedule. This schedule shall include the report due dates and presentation date for each agency to appear before the Board.

(4) The Agency shall provide one electronic copy to the statewide facilities coordinator no later than the due date stated for the agency on the CPAB Reporting schedule.

(5) If an Agency has project(s) that require review under OAR 125-125-0350 Salem Area Project Review, then a supplemental listing and description of those projects should be prepared and submitted with the other required materials.

(6) The statewide facilities coordinator will provide a substantive analysis of the plans, including review for completeness and responsiveness to issues and provide the information to the Board. The coordinator may return a list of questions to the agency or recommended changes.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

125-125-0300

Procedure for Board Review

(1) Following review of the information by the Department, the agency shall present its plans before the Board, for the purpose of determining if the projects are compatible with the criteria established in the State Facilities Planning Process Manual. The Board may pose further questions to the agency or determine if additional action is required and postpone acceptance or comment on the plans.

(2) In order to grant acceptance or favorable comment on the plans, the Board must find the project is compatible with the criteria listed in the State Facilities Planning Process Manual and the Budget Instructions.

(3) No agency subject to this rule shall seek Legislative or Emergency Board approval of projects meeting the criteria of 125-125-0150 without first having obtained review of the project by the Board.

(4) The Board shall accept the report after consideration of agency submissions, testimony, and public testimony, if any. Their comments shall be kept in the formal meeting minutes and provided to the Director and budget analysts for inclusion in the agency's budget package.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

125-125-0350

Salem Area Project Review

(1) The Department shall conduct a special review process for projects on state-owned property, located within the boundaries of the city of Salem.

(2) This review process applies to any state officer, board, commission or department authorized by law to engage in capital construction or improvement projects in the areas described by ORS 276.028.

(3) The Department shall use the Board to assist with this review for major projects or those requiring public input. Reviews will be based upon the development standards and policies contained in the Area Plans previously developed by the Capitol Planning Commission or as modified by the Department after review by the Board.

(4) Area Plans cover the following state properties: Capitol Mall Area; Airport Road Area; Hillcrest Area; Southeast Salem Area (formerly known as Oregon State Corrections Area); State Fair and Exposition Center Area; Oregon State Hospital and Penitentiary Properties Area; Oregon School for the Blind Area; and, Oregon School for the Deaf Area.

(5) For the purposes of the review required under this section, project means expenditures for capital construction or for capital improvement. A project does not include the following:

(a) Interior remodeling that does not substantially change the existing use of space to another use (e.g., office space, or space used by the public);

(b) Repair or maintenance that does not substantially change the existing use of space, that does not add additional square footage to a building, and that does not change exterior building design;

(c) Individual plantings within an established landscape plan that do not alter the overall plan concept.

(6) A minor improvement to the building or grounds means an improvement that does not fall within the exceptions under OAR 125-125-0350 and impacts the appearance of the building grounds or exterior.

(7) A major improvement to the building or grounds, addition, or new construction means a total rework of the building exterior or landscaping, an addition to the building, or construction of a new building.

(8) No state agency may expend funds for any project subject to the requirements of this section unless the project has been reviewed and approved through the described review process. An agency is not precluded by this rule from collecting management data for the preparation of a project proposal.

(9) An agency seeking project review will submit a written request to the Statewide Facilities Program not less than 21 days before the next scheduled meeting of the Board. The Department shall provide a standard form for agencies to use to request project review. The Department may waive the notification period for good cause. The requesting agency shall provide 10 copies of materials submitted.

(10) Projects for minor improvements to the building or grounds shall include:

(a) A completed project application form;

(b) A written description of the project;

(c) Site, architectural, and landscaping plans (if applicable) for the project;

(d) Sufficient information to demonstrate compliance with the applicable Area Plan; and

(e) Sufficient information to demonstrate compliance with local zoning and other applicable standards.

(11) Projects for major improvements to buildings or grounds, additions, or new construction shall include an initial submittal including:

(a) A completed project application form;

(b) A written description of the project;

(c) Preliminary site, architectural, and landscaping plans (if applicable) for the project;

(d) A description of the process planned to be used to ensure compliance with the Area Plan and local zoning and other applicable standards; and

(e) A description of any planned meetings with neighborhood groups or other interested members of the public.

(12) Once the design of the major project is completed, the state agency shall make a final project submittal, which shall include:

(a) Site, architectural, and landscaping plans (if applicable) at a design development stage or later;

(b) Sufficient information to demonstrate compliance with the applicable Area Plan;

(c) Sufficient information to demonstrate compliance with local zoning and other applicable standards; and

(d) A record of meetings with neighborhood groups or other interested members of the public.

(13) For new construction projects, facility siting review will be required before starting design and making the required submittals under OAR 125-125-0350(11). For siting review, the following shall be provided:

(a) A completed site need and description form;

(b) A written description of the proposed improvements that will be constructed;

(c) A vicinity map showing the proposed site and its proximity to major streets and surrounding functions;

(d) A topographic map of the proposed site indicating the boundaries for proposed improvements, prominent features, surrounding buildings, and other related information to provide a context for the project;

(e) Preliminary information about whether sewer, water, streets, and other infrastructure is available to service the proposed use;

(f) A preliminary assessment of any wetland, flood plain, environmental, or archeological issues on the site and whether development would likely impact them;

(g) Sufficient information to demonstrate compliance with local zoning, comprehensive plan, and other related land use standards.

(h) If the proposed site is on state-owned property, sufficient information to demonstrate that the proposed use is in compliance with the applicable Area Plan; and

(i) If the proposed site is to be acquired, an assessment of what state-owned properties were considered and why none were acceptable, plus information required by the Facility Siting Policy 125-6-115.

(14) If the project is within the areas included in the Capitol Mall Area Plan, the required submittals shall also include the conclusions from the Capitol Mall Project Review Committee according to the requirements of OAR 125-125-0450.

(15) The Board shall review the material submitted by the agency and acknowledge if the applicable requirements were met. The Board shall also provide an opportunity for interested members of the public to comment about the project's compliance with the Area Plan. The Board will then pass the record of the project review to the agency and the Director.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

125-125-0400

Area Plan Update Responsibilities

(1) Each agency owning property in the Salem area shall be responsible for helping maintain an Area Plan for property it owns.

(2) The Department shall develop a standard template for Area Plans, which shall structure any modifications to existing plans and include content areas specified under OAR 110-010-0034. The Department shall also develop and maintain a coordination plan that addresses the interrelationship among the different Area Plans and the state's presence in the City of Salem.

(3) The Department shall develop and maintain a review schedule for the Area Plans and a process for coordinating any required changes with the affected agencies and the City of Salem. If outside assistance is required to update the plan, it shall be at the expense of the property owning agency or agencies.

(4) The review schedule shall result in each Area Plan being reviewed before the Board at least once every five years and updated as may be required. At the time of the review, the Board shall provide an opportunity for public comment on any proposed revisions to the plan.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 1-2004(Temp), f. & cert. ef. 3-5-04 thru 9-1-04; DAS 3-2004, f. 7-15-04, cert. ef. 9-1-04; DAS 3-2006, f. & cert. ef. 3-15-06; DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

125-125-0500

Area Plan Review, Adoption, Amendment, and Repeal Process

(1) The Capital Projects Advisory Board (CPAB) will hold at least one public hearing pursuant to ORS 183.360 to review the draft area plan prior to forwarding its recommendations to the DAS Director.

(a) Public hearing notice will be provided at least 20 days preceding the hearing by placing notice in a local newspaper of general circulation. Additional notice may be provided to known stakeholders and anyone who

ADMINISTRATIVE RULES

requests it in writing by whatever method the Department deems necessary or desirable.

(b) A recommendation for approval requires the affirmative vote of not less than a majority of the total membership of the Board.

(c) The Board may recommend approval, conditional approval, or substantial revision. This recommendation will be forwarded to the DAS Director, along with statements from DAS staff and the landowning agencies indicating agreement or disagreement with the area plan and with the CPAB recommendation.

(d) Once the hearing(s) have been completed, the DAS Director will approve, conditionally approve, or deny the area plan. Any conditions of approval should be made an integral part of the area plan prior to its adoption. If the plan is to be approved with a substantial modification not previously considered by the CPAB, the plan must be referred back to the Board for their reconsideration and recommendation.

(2) Adoption Adoption of an area plan is accomplished by Administrative Rule, following the accepted Permanent Rulemaking Process. Rulemaking hearings regarding area plan adoptions will be held by the CPAB. Adoptions are listed under Oregon Administrative Rules, Chapter 110.

(3) Amendment and Repeal An area plan is repealed in the same manner that it is amended, by Administrative Rule. Similar to the adoption, the CPAB must hold at least one public hearing prior to taking action.

Stat. Auth.: ORS 276.227

Stats. Implemented:

Hist.: DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

125-125-0600

Copies of Records

(1) Copies of tape recordings of CPAB proceedings, when available, may be purchased at a cost of \$10 per tape cassette. The person or agency requesting copies must identify the date of the proceeding. Copies will be available only for the entire proceeding; copies of specified portions of proceedings will not be available for purchase.

(2) Copies of printed records reproduced by the CPAB, when available, may be purchased at a cost of ten cents per page/side for the first five pages/sides and four cents per page/side for additional pages/sides. Copies of records larger than 8-1/2" x 14", when available, may be purchased at the actual cost incurred by the Department in making such copies available.

Stat. Auth.: ORS 183, 276

Stats. Implemented:

Hist.: DAS 3-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

Department of Administrative Services, Capitol Planning Commission Chapter 110

Rule Caption: Rules for Area Plan Development standards.

Adm. Order No.: CPC 1-2008(Temp)

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 4-15-08 thru 10-12-08

Notice Publication Date:

Rules Adopted: 110-010-0034, 110-010-0039

Rules Amended: 110-010-0030

Rules Suspended: 110-010-0035, 110-010-0040, 110-010-0045, 110-010-0050, 110-010-0055, 110-010-0060

Subject: The rule amendment relates to the revision of the Development Standards adopted by the Capitol Planning Commission and last updated in 1988. The rule revises the current Area Plan Development Standards formerly known as the Development Standards affecting future development and uses in the Salem Area.

Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

110-010-0030

Definitions

As used in OAR Chapter 110, the following terms have the meanings indicated, unless the context requires otherwise:

(1) "Agency" means any state officer, board, commission or department, or any division thereof, authorized by law to engage in capital construction or improvement projects in the areas described by ORS 276.028.

(2) "Area Plan" means a plan setting policies and standards to guide development of a specific geographical area within the city of Salem.

(3) "CPAB" means the Capital Projects Advisory Board.

(4) "DAS Director" means the Director of the Department of Administrative Services or his/her designee.

(5) "Department" means the Department of Administrative Services.

(6) "Project" means expenditures for capital construction or for capital improvement and adoption or approval of area plans in the area described by ORS 276.028, and within the following limitations:

(a) Capital Construction includes expenditures related to construction or remodeling of physical facilities with a project cost of \$500,000 or more;

(b) Capital Improvement includes expenditures related to construction or remodeling of physical facilities with a project cost of more than \$5,000, but less than \$500,000;

(c) A project *does not include*:

(A) Interior remodeling that does not substantially change the existing use of space to another use (e.g., office space, or space used by the public);

(B) Repair or maintenance which does not substantially change the existing use of space, which does not add additional square footage to a building, and which does not change exterior building design;

(C) Individual plantings within an established landscape plan that do not alter the overall plan concept.

(7) Notwithstanding the provisions of subsection (6)(c) of this rule, capital improvement or capital construction which includes interior remodeling or repair for the purpose of converting an existing use to a use relating to the housing of Correctional or Forensic Psychiatric Inmates shall be a "project" and shall require DAS Director review and approval.

Stat. Auth.: ORS 183, 197 & 276

Stats. Implemented:

Hist.: CPC 5-1981, f. & ef. 12-1-81; CPC 1-1983, f. & ef. 11-29-83; COC 2-1988, f. & cert. ef. 6-23-88; CPC 1-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

110-010-0034

Development Standards Contained in Area Plans

Development standards applicable to new projects specific to each area plan shall be included in the area plans, while development standards common to all properties subject to area plans shall be included within the Salem Area Coordination Plan. Development standards shall address, but not be limited to:

(1) Setback requirements;

(2) Height, bulk, and lot coverage limitations;

(3) Landscaping requirements; and

(4) Requirements for the protection of the surrounding community environment.

Stat. Auth.: ORS 276.098

Stats. Implemented:

Hist.: CPC 1-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

110-010-0035

Agency Expenditures for Capitol Construction or Improvement

No state agency may expend moneys for any project unless such project first has been approved by the Commission. An agency is not precluded by this rule from collecting management data for the preparation of a project proposal.

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 5-1981, f. & ef. 12-1-81; Suspended by CPC 1-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

110-010-0039

Criteria and Authority to Permit Divergence

The CPAB may recommend and the DAS Director may permit a divergence from the provisions contained in the Design Standards contained in the adopted Area Plan if:

(1) The property and proposed improvements are challenged by unusual topographic, environmental, functional, or aesthetic circumstances; or

(2) The proposed alternative achieves the purposes of the Design Standards contained in the Area Plan as well or better than a compliant alternative.

(3) Permitting a divergence will not, under the circumstances of the particular case, create material adverse aesthetic, function, or health and welfare effects on neighboring owners or others coming to or passing by the Property.

(4) Each divergence request shall be considered solely on its own merits; permitting of a divergence in one situation shall not change the Design Standards contained in the Area Plan or compel the DAS Director to permit any further divergence.

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 1-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

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110-010-0040

Agency Reports to Commission on Proposed Projects

(1) Each state agency shall submit to the Commission by July 1 of each even numbered year a copy of those portions of the Capitol Construction program included in the agency's budget report prepared pursuant to ORS 291.216, which relates to capitol construction or improvement within the area described by ORS 276.028.

(2) The Commission shall review the information submitted under section (1) of this rule and make recommendations to the Executive Department by November 1 of each even-numbered year with respect to the construction and improvement proposals. The recommendations shall be based upon consistency of proposed projects with relevant area plans. Approval may be conditioned upon review by the Commission of legislatively authorized projects for consistency with area plans and development standards.

(3) No later than August 1 of each even numbered year, the Commission shall make available at its office a copy of each agency report received, for review and written comment by any interested person. Comments, to be considered by the Commission, shall be received no later than September 1 of each even numbered year.

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 5-1981, f. & ef. 12-1-81; Suspended by CPC 1-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

110-010-0045

Procedure for Submitting Proposed Projects for Review

(1) An agency seeking Commission review and approval of a specific proposed project shall submit a written project approval request to the Commission not less than 21 days before the meeting at which Commission review is requested. The Commission may waive the 21-day notification period for good cause shown.

(2) An agency request for Commission review of a proposed project shall include:

(a) Architectural and landscaping plans (if appropriate) for the project;

(b) Sufficient information to demonstrate compliance with applicable standards for development;

(c) Sufficient information to demonstrate compliance with the applicable area plan;

(d) Sufficient information to demonstrate consistency of the project with applicable statewide planning goals and applicable acknowledged local government comprehensive plans and implementing ordinances.

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 5-1981, f. & ef. 12-1-81; CPC 1-1983, f. & ef. 11-29-83; Suspended by CPC 1-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

110-010-0050

Copies of Materials

Any initiator of a proposal or request to the Commission for action or approval, shall provide 20 copies of the proposal or request to the Commission. Any person or agency submitting a written statement or material in support of or in opposition to a proposal or request before the Commission is encouraged to provide 20 copies of the statement and/or materials.

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 5-1981, f. & ef. 12-1-81; Suspended by CPC 1-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

110-010-0055

Procedure for Commission Review

(1) Following receipt of a project approval request, the Commission shall hold a hearing for the purpose of obtaining the views of the public on the proposed project. The hearing will not be a contested case hearing.

(2) Notice of the hearing shall be mailed to interested persons, either by separate notice or by inclusion on the Commission's meeting agenda, at least ten days in advance.

(3) If upon review of a project approval request the Commission believes that more information relating to a particular Commission standard is required, the Commission may postpone action on the request and may direct the requesting agency or Commission staff to provide additional information.

(4) In order to grant approval of a project, the Commission must find that the project is compatible with the applicable statewide planning goals and with applicable acknowledged local government comprehensive plans

and implementing ordinances as provided for in the Commission's State Agency Coordination Program which is hereby adopted by reference.

(5) In order to grant approval of a project, the Commission must find that the project is consistent with the applicable area master plan and development standards of the Commission unless such area plans and standards are proposed for amendment.

(6) The Commission shall adopt written findings of fact after consideration of agency submissions, public testimony, staff review, and evidence presented, articulated or adduced, at the public hearing, addressing applicable development standards and plan elements.

Stat. Auth.: ORS 183, 197 & 276

Stats. Implemented:

Hist.: CPC 5-1981, f. & ef. 12-1-81; CPC 1-1983, f. & ef. 11-29-83; CPC 2-1988, f. & cert. ef. 6-23-88; Suspended by CPC 1-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

110-010-0060

Copies of Records

(1) Copies of tape recordings of Commission proceedings, when available, may be purchased at a cost of \$10 per tape cassette. The person or agency requesting copies must identify the date of the proceeding. Copies will be available only for the entire proceeding; copies of specified portions of proceedings will not be available for purchase.

(2) Copies of printed records reproduced by the Commission, when available, may be purchased at a cost of ten cents per page/side for the first five page/sides and four cents per page/side for additional page sides. Copies of records larger than 8-1/2 x 14", when available, may be purchased at the actual cost incurred by the Commission in making such copies available.

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 5-1981, f. & ef. 12-1-81; Suspended by CPC 1-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

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Rule Caption: Rules for Planning and Development standards for Southeast Salem.

Adm. Order No.: CPC 2-2008(Temp)

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 4-15-08 thru 10-12-08

Notice Publication Date:

Rules Amended: 110-040-0012, 110-040-0014

Rules Suspended: 110-040-0015, 110-040-0020

Subject: The rule amendment relates to the revision of the Southeast Salem Area Plan, formerly known as the Oregon State Corrections Area Plan adopted by the Capitol Planning Commission May 8, 1985. The rule revises the current Area Plan adopting a new plan and standards affecting future development and uses in the Southeast Salem Area.

Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

110-040-0012

Southeast Salem Area Plan

The Southeast Salem Area Plan, 2008 is hereby adopted by reference. This Area Plan replaces the Oregon State Corrections Area Plan, 1985.

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

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 2-1985, f. & ef. 5-13-85; CPC 2-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

110-040-0014

Fairview/Hillcrest Area Plan

The Fairview/Hillcrest Area Plan, 1985, is hereby adopted by reference.

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

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 2-1985, f. & ef. 5-13-85; CPC 2-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

110-040-0015

Standards for Development in the East Salem Area

(1) The following standards for development shall apply to projects in the Oregon State Corrections Area:

(a) Set back requirements for buildings located in the Oregon State Corrections Area are as follows:

(A) From a street — A minimum depth of 20 feet;

(B) From other buildings — As required by the **Oregon State Structural Specialty Code** and **Fire and Life Safety Code**.

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(b) No building or other structure in the Oregon State Corrections Area shall exceed 70 feet in height;

(c) The maximum building coverage in the Oregon State Corrections Area is 50 percent of land area. (Review for compliance with the City of Salem Ordinance.);

(d) Development within the Oregon State Corrections Area shall be landscaped in a manner protective of the surrounding community environment.

(2) The following standards for development shall apply to projects in the Fairview/Hillcrest Area:

(a) Set back requirements for buildings located in the Fairview/Hillcrest Area are as follows:

(A) From a street — A minimum depth of 20 feet;

(B) From other buildings — As required by the **Oregon State Structural Specialty Code and Fire and Life Safety Code.**

(b) No building or other structure in the Fairview/Hillcrest Area shall exceed 70 feet in height;

(c) The maximum building coverage in the Fairview/Hillcrest Area is 50 percent of land area (Review for compliance with City of Salem Ordinance.);

(d) Development within the Fairview/Hillcrest Area shall be landscaped in a manner protective of the surrounding community environment.

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

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 4-1982, f. & ef. 4-6-82; CPC 2-1985, f. & ef. 5-13-85; Suspended by CPC 2-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

110-040-0020

Criteria and Authority to Grant Variance

The Commission may grant the degree of variance from the provisions contained in OAR 110-040-0015 imposed on a particular subject property under this rule which is reasonably necessary to permit development of an otherwise lawful use upon the finding that each of the following criteria is met:

(1) There are special conditions applying to the land, buildings, or use referred to in the application, which do not apply generally to land, buildings, or uses in the same area, and which create unreasonable hardships or practical difficulties which can be most effectively relieved by a variance. The purely economic interests of the agency shall not in itself constitute such special conditions. The potential for economic development of the subject property itself may, however, be considered among the factors specified in this section.

(2) Granting a variance will not be unreasonably detrimental to the public welfare or to the property or improvements in the neighborhood of the subject property.

(3) Granting a variance will not, under the circumstances of the particular case, unreasonably affect the health or safety of persons working, residing or visiting in the neighborhood of the subject property.

(4) Granting a variance will be consistent with the Area Plan.

Stat. Auth.: ORS 183 & 276

Stats. Implemented:

Hist.: CPC 1-1985, f. & ef. 1-30-85; Suspended by CPC 2-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

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Department of Administrative Services, Oregon Educators Benefit Board Chapter 111

Rule Caption: Establishes Oregon Educators Benefit Board's policy for effective dates for initial employee group phase-in for Subject Districts and Provisional Non-subject districts.

Adm. Order No.: OEBC 5-2008

Filed with Sec. of State: 4-1-2008

Certified to be Effective: 4-1-08

Notice Publication Date: 2-1-2008

Rules Adopted: 111-020-0001

Subject: Establishes Oregon Educators Benefit Board's policy for effective dates for initial employee group phase-in for Subject Districts and Provisional Non-subject districts.

Rules Coordinator: Rose Mann—(503) 378-4606

111-020-0001

Initial Employee Group Phase-in

(1) Any employee group in Subject Districts or Provisional Non-subject Districts may elect to participate in benefit plans provided by the Board beginning on October 1, 2008, October 1, 2009, or October 1, 2010, with-

out having to meet the phase-in requirements outlined under Sections 2, 3 and 4; however:

(a) Eligible employees of a Subject District who are represented under a collective bargaining agreement with an end date of July 1, 2007, through June 30, 2008, must participate in benefit plans provided by the Board beginning October 1, 2008.

(b) Eligible employees of a Subject District who are represented under a collective bargaining agreement with an end date of July 1, 2008, through June 30, 2009, must participate in benefit plans provided by the Board beginning October 1, 2009.

(c) Eligible employees of a Subject District who are represented under a collective bargaining agreement with an end date on or after July 1, 2009, must participate in benefit plans provided by the Board beginning October 1, 2010.

(d) Eligible employees of a Subject District who are not represented under a collective bargaining agreement must participate in benefit plans provided by the Board consistent with the requirements governing eligible employees of the Subject District who are represented under a collective bargaining contract as outlined under section 1(a), (b) and (c) above. If more than one collective bargaining contract exists in the Subject District, the earliest collective bargaining contract end date must be applied. If no employee group in the Subject District is represented through a collective bargaining agreement, all eligible employees of the district must participate in benefit plans provided by the Board beginning October 1, 2008.

(2) An employee group electing to participate in benefit plans provided by the Board under section 1 must provide notice of such election not later than June 30, 2008, for the benefit year beginning October 1, 2008 or May 31 of any following year in which they plan to move to the OEBC benefit plans on October 1.

(3) A Provisional Non-subject District wanting to continue providing benefit plans other than those benefit plans provided by the Board must submit an application requesting to be excluded from the requirements of this Section. The application must show that the premiums for the benefit plans provided or contracted for by the district are equal or less than the premiums for comparable benefit plans provided by the Board. Applications must be submitted not later than May 31, 2010, and each year that follows.

(4) Employee groups in Provisional Non-subject Districts who elect to participate in benefit plans provided by the Board cannot return to benefit plans provided or administered by an entity other than the Board.

Stat. Auth.: 2007 OL Ch. 7

Stats. Implemented: 2007 OL Ch. 7, Sec. 14 & 16 & 2008 OL Ch. 39, Sec. 9

Hist.: OEBC 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBC 3-2007(Temp), f. & cert. ef. 11-15-07 thru 3-18-08; OEBC 5-2008, f. & cert. ef. 4-1-08

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Rule Caption: Establishes Oregon Educators Benefit Board's policy for requesting members' social security numbers for benefits administration purposes.

Adm. Order No.: OEBC 6-2008(Temp)

Filed with Sec. of State: 4-1-2008

Certified to be Effective: 4-1-08 thru 9-28-08

Notice Publication Date:

Rules Adopted: 111-060-0001

Subject: Establishes Oregon Educators Benefit Board's policy for requesting members' social security numbers for benefits administration purposes.

Rules Coordinator: Rose Mann—(503) 378-4606

111-060-0001

Use of Social Security Numbers

(1) The Oregon Educators Benefit Board (OEBC) shall comply with the requirements of Section 7 of the Privacy Act of 1974 and the Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628 when requesting or requiring complete or partial disclosure of an eligible employee's or family member's, as defined in ORS 243.860(4) and (5) respectively, social security number.

(2) OEBC may request voluntary disclosure and consent to use the social security number of an eligible employee or family member for OEBC's internal verification and identification of enrollments or elections for participation in benefits provided by OEBC.

(3) A request for disclosure of an employee's social security number will notify the eligible employee or family member:

(a) Whether disclosure is mandatory or voluntary;

(b) Under what statutory or other authority the social security number is requested;

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(c) What specific use or uses will be made of the number; and
(d) What effect, if any, refusal to provide the number or to grant consent for a voluntary use as described above in (2) will have on an individual.

(4) An eligible employee's or family member's social security number may not be put to a voluntary use as described above in (2) unless the eligible employee or family member has granted consent for that use. If, after having provided notice and received consent to use an eligible employee's or family member's social security number for specified purposes, OEBB wishes to use the social security number for additional purposes not included in the original notice and consent, OEBB must provide the eligible employee or family member notice and receive the eligible employee's or family member's consent to use the number for those additional purposes.

(5) An eligible employee's or family member's refusal to permit voluntary use of his or her social security number will not be used as a basis to deny the eligible employee or family member a right, benefit, or privilege provided by law.

(6) OEBB will develop and provide a disclosure and consent form for requesting social security numbers.

Stat. Auth.: ORS 243.864

Stats. Implemented:

Hist.: OEBB 6-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

Rule Caption: Establishes Oregon Educators benefit Board's policy for the continuation of group medical and dental coverage.

Adm. Order No.: OEBB 7-2008

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 4-15-08

Notice Publication Date: 2-1-2008

Rules Adopted: 111-050-0010, 111-050-0015, 111-050-0001

Subject: Establishes Oregon Educators benefit Board's policy for the continuation of group medical and dental coverage.

Rules Coordinator: Rose Mann—(503) 378-4606

111-050-0001

Continuation of Group Medical and Dental Insurance Coverage Under The Consolidated Omnibus Budget Reconciliation Act (COBRA)

COBRA allows an eligible individual losing group health plan coverage due to a qualifying event to continue their coverage for a limited time on a self-pay basis.

(1) OEBB will issue or cause the issuance of an initial COBRA notice explaining the right to continue medical and dental insurance plans to all newly eligible employees and individuals.

(a) The notice must be mailed to the eligible employee's known address immediately following enrollment in OEBB medical or dental insurance plans. The notice must include all known

eligible individuals residing at the address. Known eligible individuals residing separately from the eligible employee must be mailed a separate notice at their known address.

(b) The initial COBRA notice must be mailed to individuals becoming newly eligible due to marriage or the formation of a domestic partnership.

(2) A COBRA triggering event must cause the loss of benefit coverage. COBRA triggering events include:

(a) An involuntary reduction in hours or layoff;

(b) A strike or lockout;

(c) The beginning of an unpaid leave of absence;

(d) The termination of employment;

(e) Retirement;

(f) A dependent child no longer satisfying eligibility requirements;

(g) The loss of employer-sponsored group coverage for dependents due to Medicare eligibility;

(h) A divorce or termination of a domestic partnership; and

(i) The death of the employee.

(3) All individuals losing eligibility due to a triggering event must receive a COBRA continuation notice.

(4) An eligible employee or dependent has 60 days from the receipt of the COBRA notice to activate their COBRA rights of continuation. OEBB-sponsored insurance coverage must be continuous through COBRA implementation.

(5) Generally, medical plans may be continued under COBRA provisions for the following basic maximum coverage periods:

(a) 18 months after the date of the triggering events specified in section 2(a)–(e) above; or

(b) 36 months after the date of the triggering events specified in section 2(f)–(i) above.

(6) An eligible employee's spouse or domestic partner who is 55 years of age or older and who loses benefit coverage due to events specified in section 2(h) and (i) above, may continue OEBB medical insurance coverage for themselves and their dependent children beyond the general 36-month COBRA continuation period. An eligible individual may continue their OEBB medical insurance coverage until they are entitled to Medicare, are covered under another group medical insurance plan or otherwise lose eligibility.

(7) An eligible individual continuing OEBB medical insurance coverage only or medical and dental insurance coverage under COBRA provisions has the same rights as active eligible employees for making changes midyear and during the open enrollment period.

Stat. Auth.: ch. 7, OL 2007

Stats. Implemented: ORS 659A.060 - 659A.069, 743.600 - 743.602, sec. 1(4)(a)(B), ch. 7, OL 2007 & sec. 4(7), ch. 7, OL 2007

Hist.: OEBB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBB 7-2008, f. & cert. ef. 4-15-08

111-050-0010

Eligibility for Retiree Medical and Dental Insurance Coverage

An eligible retired employee and their eligible dependents enrolled in an OEBB benefit plan or district benefit plan for active employees may continue participation in any OEBB retiree medical and dental insurance plan or plans available to his or her Employee Group until becoming eligible for Medicare. Insurance coverage under the OEBB or district active benefit plans, as an employee or as a dependent of an employee, and retiree benefit plans must be continuous.

(1) A retired employee must be:

(a) Receiving a service or disability retirement allowance or pension under the Public Employees Retirement System (PERS) or under any other retirement or disability benefit plan or system offered by an OEBB participating organization for its employees;

(b) Eligible to receive a service retirement allowance under PERS and has reached earliest retirement age under ORS Chapter 238;

(c) Eligible to receive a pension under ORS 238A.100 to 238A.245 and has reached earliest retirement age as described in ORS 238A.165; or

(d) Eligible to receive a service retirement allowance or pension under another retirement benefit plan or system offered by an OEBB participating organization and has reached earliest retirement age under the plan or system.

(2) A retired eligible employee may elect insurance coverage for themselves only or may elect to cover any eligible dependents covered by the employee's active plan immediately prior to the retirement.

(3) A former eligible employee who elects COBRA and later becomes eligible as a retired employee will have the right to transfer the COBRA medical and dental insurance coverage to the OEBB retiree benefit plans at any time during COBRA or within 30 days of the COBRA end date. Insurance coverage under the OEBB active, COBRA and retiree benefit plans must be continuous.

Stat. Auth.: ch. 7, OL 2007

Stats. Implemented: ORS 659A.060 - 659A.069, 743.600 - 743.602, sec. 1(4)(a)(B), ch. 7, OL 2007 & sec. 4(7), ch. 7, OL 2007

Hist.: OEBB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBB 7-2008, f. & cert. ef. 4-15-08

111-050-0015

Retirees Eligible for Medicare Coverage

(1) A retiree and eligible individuals enrolled in OEBB retiree insurance plans who become eligible for Medicare coverage may not continue an OEBB retiree medical insurance plan. The exception is for Medicare eligibility as a result of end-stage renal disease. Insurance coverage ends the last day of the month that eligibility is lost.

(2) If a retiree becomes eligible for Medicare coverage, but his or her currently-enrolled eligible dependents are not, these eligible individuals may continue OEBB medical and dental insurance coverage until such time as they no longer meet OEBB eligibility requirements or become eligible for Medicare coverage, whichever occurs first. The eligible individuals must submit the application for enrollment to the retiree plan administrator within 60 days of the retiree's eligibility for Medicare.

Stat. Auth.: ch. 7, OL 2007

Stats. Implemented: ORS 659A.060 - 659A.069, 743.600 - 743.602, sec. 1(4)(a)(B), ch. 7, OL 2007, sec. 4(7), ch. 7, OL 2007

Hist.: OEBB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBB 7-2008, f. & cert. ef. 4-15-08

ADMINISTRATIVE RULES

Department of Agriculture Chapter 603

Rule Caption: Proposal to raise nursery license fees to cover projected deficit.

Adm. Order No.: DOA 13-2008

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 4-15-08

Notice Publication Date: 3-1-2008

Rules Amended: 603-054-0016, 603-054-0017, 603-054-0018

Subject: The proposed amendment to the nursery license fee rule would raise the cost of a nursery license by 12%. These fees have not been adjusted since 2003. The cumulative impact of inflation and the new state employees compensation package will result in a deficit in the nursery program within a year. The proposed fee increase will cover the immediate projected deficit for 2008. Additionally, the proposed amendment would correct an error in the millage rate for greenhouse growers and dealers with annual sales between \$500,001 and \$2,000,000.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-054-0016

License Fees: Growers and Collectors

(1) The license fee for nursery growers, other than greenhouse growers of herbaceous plants, and for collectors of native plants shall be as follows: If Annual Sales are — The license fee is:

- (a) Up to \$20,000 = \$112;
- (b) \$20,001–\$100,000 = \$112 plus .0035 over \$20,000;
- (c) \$100,001–\$200,000 = \$392 plus .0032 over \$100,000;
- (d) \$200,001–\$500,000 = \$712 plus .0026 over \$200,000;
- (e) \$500,001–\$2,000,000 = \$1,492 plus .0016 over \$500,000;
- (f) \$2,000,001 & above = \$3,892 plus .00045 over \$2,000,000;
- (g) Maximum Fee = \$20,000.

(2) In addition to the annual license fee above, there will be a research assessment equal to .0002 of annual sales. The minimum research assessment is \$10.

(3) In addition to the annual license fee (1) and research assessment fee (2) above, there will be an assessment for the Plant Pest and Disease Emergency Response Fund. The assessment will be adjusted annually to maintain a fund balance of \$250,000 and will not exceed .0002 of annual sales.

Stat. Auth.: ORS 561 & 571

Stats. Implemented: ORS 571.057

Hist.: AD 8-1986, f. & ef. 5-22-86; AD 11-1995(Temp), f. & cert. ef. 6-14-95; AD 13-1997, f. & cert. ef. 7-31-97; Administrative correction 8-26-97; DOA 2-2003, f. & cert. ef. 1-7-03; DOA 9-2006, f. & cert. ef. 3-22-06; DOA 3-2008, f. & cert. ef. 1-7-08; DOA 13-2008, f. & cert. ef. 4-15-08

603-054-0017

License Fees: Greenhouse Growers of Herbaceous Plants

(1) The license fee for greenhouse growers of herbaceous plants shall be as follows: If Annual Sales are — The license fee is:

- (a) Up to \$20,000 = \$112;
- (b) \$20,001–\$100,000 = \$112 plus .0014 over \$20,000;
- (c) \$100,001–\$200,000 = \$224 plus .0011 over \$100,000;
- (d) \$200,001–\$500,000 = \$334 plus .00056 over \$200,000;
- (e) \$500,001–\$2,000,000 = \$502 plus .0005 over \$500,000;
- (f) \$2,000,001 & above = \$1,256 plus .00045 over \$2,000,000;
- (g) Maximum Fee = \$20,000.

(2) In addition to the annual license fee above, there will be a research assessment equal to .0002 of annual sales. The minimum research assessment is \$10.

(3) In addition to the annual license fee (1) and research assessment fee (2) above, there will be an assessment for the Plant Pest and Disease Emergency Response Fund. The assessment will be adjusted annually to maintain a fund balance of \$250,000 and will not exceed .0002 of annual sales.

Stat. Auth.: ORS 561 & 571

Stats. Implemented: ORS 571.057

Hist.: AD 8-1986, f. & ef. 5-22-86; AD 11-1995(Temp), f. & cert. ef. 6-14-95; AD 13-1997, f. & cert. ef. 7-31-97; Administrative correction 8-26-97; DOA 2-2003, f. & cert. ef. 1-7-03; DOA 9-2006, f. & cert. ef. 3-22-06; DOA 3-2008, f. & cert. ef. 1-7-08; DOA 13-2008, f. & cert. ef. 4-15-08

603-054-0018

License Fees: Dealers, Florist and Landscape Contractors

(1) The license fee for dealers, florist, and landscape contractors shall be as follows: If annual purchases (live plant material only, cut flowers are exempt) are — The license fee is:

- (a) Up to \$20,000 = \$112;
- (b) \$20,001–\$100,000 = \$112 plus .0014 over \$20,000;
- (c) \$100,001–\$200,000 = \$224 plus .0011 over \$100,000;
- (d) \$200,001–\$500,000 = \$334 plus .00056 over \$200,000;
- (e) \$500,001–\$2,000,000 = \$502 plus .0005 over \$500,000;
- (f) \$2,000,001 & above = \$1,256 plus .00045 over \$2,000,000;
- (g) Maximum Fee = \$20,000.

(2) In addition to the annual license fee above, there will be a research assessment equal to .0002 of annual purchases. The minimum research assessment is \$10.

(3) In addition to the annual license fee (1) and research assessment fee (2) above, there will be an assessment for the Plant Pest and Disease Emergency Response Fund. The assessment will be adjusted annually to maintain a fund balance of \$250,000 and will not exceed .0002 of annual purchases.

Stat. Auth.: ORS 561 & 571

Stats. Implemented: ORS 571.057

Hist.: AD 8-1986, f. & ef. 5-22-86; AD 11-1995(Temp), f. & cert. ef. 6-14-95; AD 13-1997, f. & cert. ef. 7-31-97; Administrative correction 8-26-97; DOA 2-2003, f. & cert. ef. 1-7-03; DOA 9-2006, f. & cert. ef. 3-22-06; DOA 3-2008, f. & cert. ef. 1-7-08; DOA 13-2008, f. & cert. ef. 4-15-08

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

Rule Caption: Adopts the Attorney General's Model Rules for Rulemaking effective January 1, 2008.

Adm. Order No.: BCD 7-2008

Filed with Sec. of State: 3-18-2008

Certified to be Effective: 3-18-08

Notice Publication Date:

Rules Amended: 918-001-0010

Subject: This rulemaking adopts the current edition of the Attorney General's Model Rules for rulemaking without change.

Rules Coordinator: Nicole Jantz—(503) 378-4130

918-001-0010

Model Rules of Procedure

The Director adopts by reference the Attorney General's Model Rules for rulemaking, OAR 137-001-0005 through 137-001-0100, effective January 1, 2008.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Building Codes Division.]

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341

Hist.: BCA 20-1989, f. & cert. ef. 8-1-89; BCA 32-1993, f. 12-14-93, cert. ef. 1-1-94; BCD 12-1994, f. & cert. ef. 4-29-94; BCD 5-1996, f. & cert. ef. 3-29-96; BCD 8-1998, f. & cert. ef. 6-2-98; BCD 21-2000, f. & cert. ef. 9-19-00; BCD 32-2002, f. 12-20-02 cert. ef. 1-1-03; BCD 18-2004, f. 9-30-04, cert. ef. 10-1-04; BCD 2-2006, f. & cert. ef. 2-13-06; BCD 7-2008, f. & cert. ef. 3-18-08

Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Workers' Compensation Insurance; Unit Statistical Plan; Policy Cancellation.

Adm. Order No.: ID 3-2008

Filed with Sec. of State: 4-7-2008

Certified to be Effective: 4-7-08

Notice Publication Date: 3-1-2008

Rules Amended: 836-042-0045, 836-043-0068

Subject: This rulemaking amends the Insurance Division rule adopting the Unit Statistical Plan by reference to incorporate NCCI changes relating to fraudulent claims reporting, access to data and compensation for medical services, and amends the Division rule relating to notification by a servicing carrier of cancellation of a workers' compensation insurance policy issued under the Workers' Com-

ADMINISTRATIVE RULES

pensation Insurance Plan, to decrease the notice period in accordance with 2007 legislation.

Rules Coordinator: Sue Munson—(503) 947-7272

836-042-0045

Uniform Workers' Compensation Statistical Plan

(1) The Unit Report Expanded (URE) Workers Compensation Statistical Plan, Edition of July 1, 2001 filed by the National Council on Compensation Insurance and approved by the Director to become effective January 1, 2002 is prescribed as the statistical plan for workers' compensation insurance. In addition:

(a) The January 1, 2004 edition of Part 8, Pension Tables, of the NCCI URE Workers Compensation Statistical Plan is prescribed as the pension tables effective in this state January 1, 2004.

(b) The January 1, 2006, edition of the Part 4, Paragraph 6, Gross Losses, and Paragraph 35, Deductible Reimbursement; and Part 5, Paragraph 2, Correction Reports, are prescribed as the statistical plan for the Oregon Employer Paid Medical Program Limits effective January 1, 2006.

(c) The January 1, 2005, edition of Part 4, Paragraph 1, Reporting Losses, Paragraph 16, Fraud Amount, Paragraph 20, Loss Condition, and Paragraph 30, Fraudulent Claim; Part 5, Paragraph 2, Correction Reports; and Part 7, Paragraph 17, Fraudulent Claim are prescribed as the statistical plan for Fraudulent Claims effective July 7, 2008.

(d) The January 1, 2005, edition of Part 1, Paragraph 16, Date of Valuation and Filing; Part 4, Paragraph 11, Reporting of Assessments and Special Funds, Paragraph 15, Subrogation Amount; and Part 5, Paragraph 1, Subsequent Reports, and Paragraph 2, Correction Reports are prescribed as the statistical plan for the Addition of 6th–10th Report Levels effective July 7, 2008.

(e) The January 1, 2006, edition of the Part 4, Paragraph 6, Gross Losses, and Paragraph 35, Deductible Reimbursement; and Part 5, Paragraph 2, Correction Reports, are prescribed as the statistical plan for the Oregon Employer Paid Medical Program Limits effective January 1, 2009.

(2) The State Accident Insurance Fund Corporation and each insurer transacting workers' compensation insurance in this state shall report statistics for such business to the workers' compensation rating organization of which it is a member according to the statistical plan prescribed by section (1) of this rule.

(3) The amendments in section (1) of this rule, which were filed in ID 7-2003 with the Secretary of State on December 3, 2003 to become effective on January 1, 2004, are re-adopted with the operative date of January 1, 2004.

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

Stat. Auth.: ORS 731.244 & 737.225

Stats. Implemented: ORS 737.225

Hist.: IC 3-1982, f. 1-27-82, ef. 7-1-82; IC 10-1982, f. 6-23-82, ef. 7-1-82; IC 2-1983, f. 3-16-83, ef. 4-1-83; IC 5-1983, f. 6-30-83, ef. 7-1-83; IC 4-1984, f. 9-28-84, ef. 10-1-84; ID 2-1998, f. & cert. ef. 2-6-98; ID 15-2001, f. 12-19-01, cert. ef. 1-1-02; ID 7-2003, f. 12-3-03 cert. ef. 1-1-04; ID 5-2005, f. & cert. ef. 4-7-05; ID 10-2006, f. & cert. ef. 6-9-06; ID 3-2008, f. & cert. ef. 4-7-08

836-043-0068

Cancellation

(1) The servicing carrier may cancel a policy after its issuance, with the approval of the Insurance Commissioner, for any of the reasons stated in this section. The servicing carrier must first provide an opportunity for cure and must file the reasons for cancellation with the Insurance Commissioner for necessary approval before issuance of the cancellation notice and inform the Plan Administrator of the reason for the cancellation. A proposed cancellation shall be deemed approved unless disapproved by the Insurance Commissioner on or before the 15th day after the servicing carrier filed the reasons for cancellation. The reasons for cancellation under this section are as follows:

(a) The employer has failed to comply with reasonable health, safety and loss control requirements; or

(b) The employer has violated any of the terms and conditions under which the insurance was issued.

(2) The servicing carrier may cancel a policy without the approval of the Insurance Commissioner when cancellation is for any of the following reasons:

(a) Nonpayment of Plan premium, except that a servicing carrier must provide a minimum of 10 days' notice of additional premium owed prior to the obligation becoming past due;

(b) Failure to complete, submit and pay a payroll report due the insurer, if the insurer has given the employer the following notice:

Important Notice:

This Policy is subject to periodic payroll reporting. Reports will be sent to you in accordance with the section entitled "Reporting Frequency" on the Information Page of your policy. Your failure to complete, submit and pay these reports to the insurance company when due may result in cancellation of your policy.

(c) Nonpayment of a premium finance agreement, as defined in ORS 746.405 with notice pursuant to ORS 656.427.

(3) An insured employer whose coverage is canceled as provided in this rule must reestablish eligibility or must demonstrate entitlement to the Plan Administrator before any further assignment can be made under the Plan.

(4) If an employer fails or refuses to file any report of payroll required by the servicing carrier, the servicing carrier may estimate the payroll and make demand for premiums due thereon. If the required report and the premium due thereon are not received within ten days of actual notice of demand, the employer shall be considered in default of premium payment.

Stat. Auth.: ORS 656.427, 656.730 & 731.244

Stats. Implemented: ORS 656.427, 656.730 & 737.265

Hist.: ID 10-1996, f. 6-27-96, cert. ef. 7-1-96; ID 3-2008, f. & cert. ef. 4-7-08

Rule Caption: Relating to Establishment of a Registration Program for Warrantors of Vehicle Protection Product Warranties.

Adm. Order No.: ID 4-2008

Filed with Sec. of State: 4-7-2008

Certified to be Effective: 4-7-08

Notice Publication Date: 3-1-2008

Rules Adopted: 836-200-0105, 836-200-0110, 836-200-0120, 836-200-0130, 836-200-0140

Subject: This rulemaking implements legislation enacted in 2007 that establishes a warrantor registration program for vehicle protection product warranties.

Rules Coordinator: Sue Munson—(503) 947-7272

836-200-0105

Statutory Authority; Registration; Fees; Expiration; Renewal

(1) OAR 836-200-0100 to 836-200-0140 are adopted under the authority of section 11, ch. 685, Oregon Laws 2007, for the purpose of implementing sections 1 to 11, Ch. 685, Oregon Laws 2007.

(2) The fee for submitting a Registration Application is \$70.

(3) The fee for annual renewal of a Registration is \$25.

Stat. Auth.: ORS 731.244; 2007 OL Ch. 685, Sec. 11

Stats Implemented: 2007 OL Ch. 685, Sec. 1 - 11

Hist.: ID 4-2008, f. & cert. ef. 4-7-08

836-200-0110

Registration Procedures

(1) A warrantor of a vehicle protection product shall register with the Department of Consumer and Business Services by submitting to the Director a completed Warrantor of Vehicle Protection Product Registration Application on the form prescribed by the Director.

(2) A warrantor must include with the Registration Application a copy of each warranty form to be used in this state, and any amendments to the form that the warrantor proposes to use in the state of Oregon. A warrantor need not include any amendment that:

(a) Changes a warranty only in graphics or form, and not substantively; or

(b) Is a direct translation of the warranty form the warrantor proposes to use into a language other than English.

(3) A warrantor must also include with the Registration Application a copy of a warranty reimbursement insurance policy the warrantor intends to use to demonstrate the warrantor's financial responsibility.

(4) A warrantor must include the registration fee with the Registration Application.

(5) A registration is not effective until the warrantor receives written notification from the Director.

(6) A warrantor must renew a registration by submitting to the Director on or before December 31 of each calendar year the renewal fee and a completed Warrantor of Vehicle Protection Product Renewal Form on the form prescribed by the Director.

(7) A warrantor shall notify the Director in writing of any change in the information contained in the Registration Application not later than 30 days after the information has changed.

Stat. Auth.: ORS 731.244; 2007 OL Ch. 685, Sec. 11

Stats Implemented: 2007 OL Ch. 685, Sec. 4

Hist.: ID 4-2008, f. & cert. ef. 4-7-08

ADMINISTRATIVE RULES

836-200-0120

Warranty

To comply with the requirement in section 3, ch. 685, Oregon Laws 2007 that each warranty must list the name, mailing address, and telephone number for the Insurance Division, Department of Consumer and Business Services, a warrantor shall include the contact information for the Consumer Advocacy Unit as set out on the Web site for the Insurance Division at insurance.oregon.gov.

Stat. Auth.: ORS 731.244; 2007 OL Ch. 685, Sec. 11
Stats Implemented: 2007 OL Ch. 685, Sec. 3
Hist.: ID 4-2008, f. & cert. ef. 4-7-08

836-200-0130

Reimbursement Insurance Policy

(1) A reimbursement insurer must deliver to the warrantor and the Director of the Department of Consumer and Business Services the written notice of cancellation for a reimbursement insurance policy as required by section 6(2), ch. 685, Oregon Laws 2007 not later than 30 days prior to the effective date of the cancellation.

(2) A warrantor must discontinue offering vehicle protection product warranties as of the date of cancellation of the reimbursement insurance until the warrantor obtains new reimbursement insurance.

(3) A warrantor must deliver a copy of the new reimbursement policy to the Director within 10 business days of the warrantor's receipt of the new reimbursement policy.

Stat. Auth.: ORS 731.244; 2007 OL Ch. 685, Sec. 11
Stats Implemented: 2007 OL Ch. 685, Sec. 5 & 6
Hist.: ID 4-2008, f. & cert. ef. 4-7-08

836-200-0140

Registration Requirements Not Exclusive

Compliance with the registration requirements of OAR 836-200-0100 to 836-200-0140 is additional to and not in lieu of any other requirements established by law for the purpose of doing business in this state, including but not limited to compliance with filing requirements of the Secretary of State applicable to assumed business names and applicable to the business structure of an applicant.

Stat. Auth.: ORS 731.244; 2007 OL Ch. 685, Sec. 11
Stats Implemented: 2007 OL Ch. 685, Sec. 11
Hist.: ID 4-2008, f. & cert. ef. 4-7-08

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Rule Caption: Discount Medical Plan Organizations, Implementation of Licensing Program.

Adm. Order No.: ID 5-2008

Filed with Sec. of State: 4-14-2008

Certified to be Effective: 4-14-08

Notice Publication Date: 3-1-2008

Rules Adopted: 836-200-0200, 836-200-0210, 836-200-0215, 836-200-0220

Subject: This proposed rulemaking implements the licensing program established for discount medical plan organizations by legislation enacted in 2007.

Rules Coordinator: Sue Munson—(503) 947-7272

836-0200-0200

License, Discount Medical Plan Organization; Renewal

(1) An applicant for a license to operate as a discount medical plan organization shall apply for the license by completing and submitting to the Director the application form prescribed by the Director. The application form shall request the information required by section 5, chapter 272, Oregon Laws 2007 and this rule.

(2) To enable the Director to determine whether an applicant is financially responsible, the application shall require the following information:

(a) Whether the applicant has ever filed for bankruptcy or been adjudged a bankrupt.

(b) An audited annual financial statement for the most recent year or alternatively, an unaudited financial statement and the applicable signed federal tax form of the applicant for the most recent year, to prove that the applicant is solvent and has a continuing income stream. An applicant may submit a consolidated financial statement if the statement clearly segregates and reports the affairs of the applicant. The applicable federal tax form for the purpose of this subsection is as follows:

- (A) For an individual, Form 1040.
- (B) For a corporation, Form 1120.
- (C) For a subchapter S corporation, Form 1120S.
- (D) For a partnership, Form 1065.

(E) For a limited liability company, the form that the company files for federal income tax purposes.

(c) If the applicant is a corporation that is newly formed for the purpose of transacting business as a discount medical plan organization, the statements and forms required under subsection (b) of this section as they may be available, and the applicant's business plan, including three years of projections of net worth, revenue, expenses and net income.

(3) To enable the Director to determine whether an applicant has adequate experience and expertise to operate a discount medical plan organization, an applicant shall indicate, as provided in the application, all states and provinces of Canada in which the applicant currently holds a license, registration or certificate of authority to transact business as a discount medical plan organization, or has held such a license or certificate within ten years prior to the date of the application.

(4) To enable the Director to determine whether an applicant is of good character, an applicant shall indicate, as provided in the application, whether any license or registration of the applicant to act in any occupational or professional capacity has ever been refused, revoked or suspended in this or any other state, and whether the applicant has otherwise ever been the subject of an enforcement action taken by a licensing or registration agency. If the applicant's answer is affirmative in any respect, the applicant must also provide the name and address of the licensing or registration agency, the date of the complaint or the action taken against the license or registration, a description of the nature of the complaint or the reason for the action taken against the license or registration, and, with regard to a complaint, a description of the licensing or registering agency's disposition of the complaint.

(5) In addition to the requirements of sections (3) and (4) of this rule, to enable the Director further to determine whether an applicant has adequate experience and expertise to operate a discount medical plan organization and whether an applicant is of good character, an applicant shall submit with the application a copy of the NAIC biographical affidavit, completed by the following individuals:

(a) Each member of the board of directors, executive committee or other governing board or committee of the discount medical plan organization;

(b) Each principal officer in the case of a corporation or each partner or member in the case of a partnership or association who holds an interest of ten percent or more in the partnership or association; and

(c) Each shareholder holding directly or indirectly ten percent or more of the voting securities of the discount medical plan organization.

(6) A licensee must renew a license by submitting to the Director a completed license renewal application on the form prescribed by the Director, not later than the 30th day after receiving a notice of renewal from the Director.

Stat. Auth.: ORS 731.244 & 742.426
Stats. Implemented: ORS 742.426
Hist.: ID 5-2008, f. & cert. ef. 4-14-08

836-200-0210

Renewal of expired license

(1) A person whose license as a discount medical plan organization has expired may renew the license by submitting a completed license renewal application on the form prescribed by the Director, not later than the 90th day after the date the license expired and if:

(a) The license was not suspended or revoked by the Director, or not renewed, on any ground under section 11, chapter 272, Oregon Laws 2007; and

(b) The Director is satisfied that the person meets the requirements for the license in section 5, chapter 272, Oregon Laws 2007.

(2) A person who does not renew an expired license as provided in this rule may obtain a license only if the person applies and qualifies for and is issued the license in the same manner as a person who initially applies for the license.

Stat. Auth.: ORS 731.244 & 742.430
Stats. Implemented: ORS 742.430
Hist.: ID 5-2008, f. & cert. ef. 4-14-08

836-200-0215

One-time processing fee, cancelled application

A discount medical plan organization may retain a one-time processing fee that is not more than \$30 when the organization refunds fees, service or subscription charges, dues or other consideration paid by a member who cancels a discount medical plan as provided in section 8, chapter 272, Oregon Laws 2007.

Stat. Auth.: ORS 731.244 & 742.432
Stats. Implemented: ORS 742.432
Hist.: ID 5-2008, f. & cert. ef. 4-14-08

ADMINISTRATIVE RULES

836-200-0220

License Requirement Not Exclusive

Compliance with the licensing requirement of OAR 836-200-0200 is additional to and not in lieu of any other requirements established by law for the purpose of doing business in this state, including but not limited to compliance with filing requirements of the Secretary of State applicable to assumed business names and applicable to the business structure of an applicant.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 742.426
Hist.: ID 5-2008, f. & cert. ef. 4-14-08

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**Department of Consumer and Business Services,
Oregon Medical Insurance Pool Board
Chapter 443**

Rule Caption: Establish a time-frame for OMIP to go back retroactively on assessments after indications from audits indicate discrepancies.

Adm. Order No.: OMIPB 3-2008

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 4-15-08

Notice Publication Date: 3-1-2008

Rules Amended: 443-002-0030

Subject: Amend rule 443-002-0030 by adding a subsection to retroactively allow OMIP to adjust assessments retroactively up to three years based on corrections to annual counts of covered lives that companies report to OMIP.

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.

(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

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

Rule Caption: Adopt changes to Agricultural Labor Housing (ALH).

Adm. Order No.: OSHA 4-2008

Filed with Sec. of State: 3-24-2008

Certified to be Effective: 5-1-08

Notice Publication Date: 1-1-2008

Rules Amended: 437-002-0142, 437-004-1120

Subject: After meeting with stakeholders, negotiations with Federal OSHA, and giving consideration to comments received at hearings, Oregon OSHA adopts these changes to 437-004-1120, Agricultural Labor Housing (ALH) and Related Facilities, in Division 4/J, Agriculture/Work Environment, to make our rules "as effective" as those of Federal OSHA.

The major changes are:

Beginning on January 1, 2018, the rule will require all agricultural labor housing, where workers cook, live and sleep in the same area, to provide 100 square feet per occupant. Square footage requirements for sleep-only areas will not change.

For units built after April 3, 1980, at least one-half the required floor space in each living area must have a minimum ceiling height of 7 feet. Floor space with a ceiling height of less than 5 feet does not count toward the minimum required floor space.

Beginning in January 1, 2018, only areas with a 7 foot ceiling height will count toward the required square footage of any living or sleeping area.

Ratios of sinks and showers will change starting April 1, 2009. These rules on laundries and window requirements will also change on April 1, 2009.

Delayed effective dates are to give operators time to secure needed permits from local authorities and to arrange financing for projects that require major work.

Oregon OSHA removed references to tents. Tents are acceptable labor housing when they meet all the criteria in the rule, just like any other style housing.

ADMINISTRATIVE RULES

The rule now requires heat be available in all ALH without regard to the time of year.

The rule now requires 'livestock operations' be at least 500 feet from all ALH unless the employees in the housing are employed to tend or otherwise work with the animals. This does not apply to animals owned by the housing occupants.

OAR 437-002-0142 Temporary Labor Camps in Division 2/J, General Industry/Environmental Controls, is also amended. The entire text of the rule is removed and new language is added stating that OAR 437-004-1120 applies in General Industry, Construction, and Forest Activities as well as Agriculture, except paragraph (5), (6)(p), and (24).

Please visit OR-OSHA's website at www.osha.org.

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-002-0142

Labor Camps

For temporary labor camps operated by employers covered under Divisions 2 (General Industry), 3 (Construction) and 7 (Forest Activities), the following rule applies: Division 4/J, 437-004-1120 (Agricultural Labor Housing and Related Facilities) except paragraphs (5), (6)(p) and (24).

Stat. Auth.: ORS 654.025(2) & 656.726(3).

Stats. Implemented: ORS 315.164, 658.750, 658.755, 658.780, 658.785, 658.805, 658.810 & 658.825

Hist.: OSHA 13-1992, f. 12-7-92, cert. ef. 2-1-93; OSHA 9-1995, f. & cert. ef. 11-29-95; OSHA 5-2000, f. 5-18-00, cert. ef. 6-1-00; OSHA 4-2008, f. 3-24-08, cert. ef. 5-1-08

437-004-1120

Agricultural Labor Housing and Related Facilities

(1) Application.

(a) These rules apply to any place, or area of land, where there are living areas, manufactured or prefabricated homes or dwellings or other housing provided by a farmer, farm labor contractor, agricultural employer or other person in connection with the recruitment of workers on an agricultural establishment.

(b) These rules apply to any type of labor housing and related facilities together with the tract of land, established, or to be established, operated or maintained for housing workers with or without families whether or not rent is paid or collected.

(c) Manufactured dwellings and homes must comply with specifications for construction of sleeping places, unless they comply with ORS 446.155 to 446.185 and OAR 918-500-0020(2) that have the requirements and specifications for sanitation and safety design for manufactured dwellings.

(d) These rules apply to housing given to, rented, leased to or otherwise provided to employees for use while employed and provided or allowed either by the employer, a representative of the employer or a housing operator.

(e) These rules, unless otherwise stated, apply to all occupants of the labor housing and facilities.

(f) These rules apply to all labor housing sites owned, operated, or allowed to operate on property under the jurisdiction of any state or municipal authority.

(g) Violations relating to the occupants' personal housekeeping practices in facilities that are not common use will not result in citations to the employer.

(h) For the purposes of OAR 437-004-1120, labor contractors as defined in ORS 658.405 are employers.

(2) These rules do not apply to:

(a) hotels or motels that provide similar housing commercially to the public on the same terms as they do to workers.

(b) accommodations subject to licensing as manufactured dwelling parks, organizational camps, traveler's accommodations or recreation vehicle parks and open to the general public on the same terms.

(c) manufactured homes or dwellings being moved regularly from place to place because of the work when at parks or camps meant for parking mobile vehicles and open to the general public on the same terms.

(3) Charging occupants for required services. Operators may not charge for services required by this rule (OAR 437-004-1120). This prohibits pay-per-use toilets, pay-per-use bathing facilities or any other method of paying for individual service requirements.

(4) Definitions.

(a) Clean means the absence of soil or dirt or removal of soil or dirt by washing, sweeping, clearing away, or any method appropriate to the material at hand.

(b) Common use facilities are those for use by occupants of more than one housing unit or by occupants of dormitory-style housing.

(c) Common use cooking and eating facility is a shared area for occupants to store, prepare, cook, and eat their own food.

(d) Dining hall is an eating place with food furnished by and prepared under the direction of the operator for consumption, with or without charge, of the occupants.

(e) Facility means a living area, drinking water installation, toilet installation, sewage disposal installation, food handling installation, or other installation required for compliance with the labor housing and related facility rules.

(f) Garbage means food wastes, food packaging materials or any refuse that has been in contact with food stuffs.

(g) Housing site is a place where there are living areas.

(h) Livestock operation is any place, establishment or facility with pens or other enclosures in which livestock is kept for purposes including, but not limited to, feeding, milking, slaughter, watering, weighing, sorting, receiving, and shipping. Livestock operations include, among other things, dairy farms, corrals, slaughterhouses, feedlots, and stockyards. Operations where livestock can roam on a pasture over a distance are outside this definition.

(i) Living area is any room, structure, shelter, tent, manufactured home or dwelling or prefabricated structure, vehicle or other place housing one or more persons.

(j) Manufactured dwelling is a residential trailer, built before January 1, 1962, for movement on the highway, that has sleeping, cooking and plumbing facilities; or, a mobile home, constructed for movement on the highway, that has sleeping, cooking and plumbing facilities, built between January 1, 1962 and June 15, 1976 and meeting the requirements of Oregon mobile home law in effect at the time of construction.

(k) Manufactured home is a structure built for movement on the highway that has sleeping, cooking and plumbing facilities and is used as a residence. Built on or after June 15, 1976 to comply with federal manufactured housing standards and regulations in effect at the time of construction. More information on these definitions is in ORS 446.003(26).

(l) Operator means any person or company that operates labor housing and/or related facilities.

(m) Potable water is water meeting the bacteriological and other requirements of the Public Health Division of the Oregon Department of Human Services.

(n) Prefabricated structure means a building or subassembly which has been in whole or substantial part manufactured or assembled using closed construction at an off-site location to be wholly or partially assembled on-site; but does not include a manufactured home or dwelling. Prefabricated structures are manufactured in accordance with the Oregon state building code and rules adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services in OAR 918-674.

(o) Privy is the same as outhouse or pit toilet but is not the same as portable toilets.

(p) Recyclable material means containers that are returnable for refund of a deposit or materials gathered as part of a recycling program.

(q) Refuse includes waste materials such as paper, metal, discarded items, as well as debris, litter and trash.

(r) Sanitary means free from agents that may be injurious to health.

(s) Sewage means the water-carried human and animal wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places, together with such ground-water infiltration, surface waters, or industrial wastes as may be present.

(t) Toilet room is a room in or on the premises of any labor housing, with toilet facilities for use by employees and occupants of that housing.

(5) Housing registration requirements.

(a) ORS 658.705 requires the operator of Agricultural Labor Housing and Related Facilities to register such housing with Oregon OSHA as in (b) below, except the following:

(A) housing occupied solely by members of the same family,

(B) housing occupied by five or fewer unrelated persons, and

(C) housing on operations that do not produce or harvest farm crops (Oregon OSHA considers "production of crops" to mean production of farm crops for sale")

(b) Each year, before occupancy, the operator or employer must register agricultural labor housing and related facilities with Oregon OSHA as set out below.

(A) The operator must contact Oregon OSHA at least 45 days before the first day of operation or occupancy of the housing and related facilities. Instructions and additional information will come later by mail.

ADMINISTRATIVE RULES

(B) If the housing and related facilities were not registered in the previous year, the operator must call Oregon OSHA to request a consultation visit to the housing. Oregon OSHA will register housing and related facilities not previously registered only after a pre-occupancy consultation that finds the housing or facility to be substantially in compliance with all applicable safety and health rules.

(C) If there were significant changes in the circumstances of the housing or facilities since the last registration, Oregon OSHA may, at its discretion, refer the employer for a consultation prior to re-registering the housing and facilities.

(D) Once registered, the operator must display the registration certificate provided by Oregon OSHA in a place frequented by employees. The operator must also provide and display a translation of the certificate in the language or languages used to communicate with employees.

(c) The Director of the Department of Consumer and Business Services or designee may revoke a labor housing and related facilities registration if Oregon OSHA determines that any of the following apply:

(A) The application had any negligent or willful material misrepresentation, or false statement.

(B) The conditions under which the registration was accepted no longer exist or have changed.

(C) The housing and related facilities are not substantially in compliance with the applicable safety and health rules.

(d) When Oregon OSHA revokes the registration of agricultural labor housing and related facilities, operators or their agents have 30 days to file a written appeal. On receipt of such appeal, the Director of the Department of Consumer and Business Services will hold a contested case hearing on that appeal under ORS 183.413, et seq.

(e) Any group or individual may protest the proposed registration, continued registration or renewal of any labor housing and related facilities registration under the following conditions:

(A) The signed and dated protest must be submitted in writing and received by the Director before issuance of the registration or renewal.

(B) The protest must include the name, address and phone number of the individual or group filing it.

(C) The protest must clearly identify which housing and related facilities is the subject of the protest, including the exact physical location and name of the applicant.

(D) The protest must clearly state the facts and reasons for the protest. Such facts and reasons must be based on factors that are within the scope of ORS 654, 658.705 through 658.850 and any relevant regulations.

(E) When the above provisions are met, such group or individual may participate in the contested case as a party or limited party under OAR 137-003-0005.

(6) Site requirements.

(a) The grounds of labor housing and related facilities must be substantially free from waste water, sewage, garbage, recyclable material, refuse or noxious plants such as poison oak and poison ivy.

(b) During housing occupancy, grass, weeds and brush must be cut back at least 30 feet from buildings.

(c) All housing site land must have adequate drainage. The site must not be subject to flooding when occupied.

(d) Adequately dispose of the waste water and food waste under outside water hydrants.

(e) The operator of labor housing is responsible for the maintenance and operation of the housing and its facilities.

(f) Store all toxic materials such as pesticides, fertilizers, paints and solvents in a safe place.

(g) Do not leave empty pesticide containers such as drums, bags, cans, or bottles in the housing area.

(h) Prevent or control the breeding of mosquitoes, flies, and rodents in the immediate housing area and within 200 feet of any labor housing and related facilities owned or under lawful control or supervision of the operator.

(i) Do not locate labor housing within 500 feet of livestock operations unless the employees in the housing are employed to tend or otherwise work with the animals. NOTE: This does not apply to animals owned by the housing occupants.

(j) Provide electricity to all housing units and related facilities. Subdivision 4/S, Electricity applies to ALH)

(k) Extension cords or plug strips must have circuit breaker or fuse protection either as part of the set or part of the building wiring.

(l) Facilities built or remodeled before December 15, 1989, must have a ceiling or wall-type electric light fixture in working order and at least one wall-type electrical outlet in every living area. Facilities built or remodeled

after that date must comply with the code in effect at the time of construction or remodeling.

(m) Provide a ceiling or wall-type electric light in toilet rooms, lavatories, shower or bathing rooms, laundry rooms, hallways, stairways, the common eating area or other hazardous dark areas.

(n) Light privies either directly or indirectly from an outside light source.

(o) Provide enough light in corridors and walkways to allow safe travel at night.

(p) Each housing site must have its street numbers displayed to be easily visible to responding emergency vehicles on public highways or roads.

(q) The lowest point of wooden floor structures must be at least 12 inches above ground.

(7) Water supply.

(a) All domestic water furnished at labor housing and related facilities must conform to the standards of the Public Health Division of the Oregon Department of Human Services.

(A) The site water system must supply at least 15 psi at the outlet end of all water lines regardless of the number of outlets in use.

(b) Have a bacteriological analysis done on the water before occupancy and as often as needed to assure a potable water supply, except when the water comes from a community water system.

(c) Provide enough potable water in the labor housing area for drinking, hand washing, bathing and domestic use. An ample supply is at least 35 gallons of water per day per occupant.

(d) Arrange, construct and if necessary, periodically disinfect the water storage and distribution facilities to satisfactorily protect the water from contamination. Install all new plumbing in labor housing and related facilities to comply with the Oregon state building code.

(e) When potable water is not available in each dwelling unit, there must be a potable water source within 100 feet of each unit and there must be a working, clean drinking fountain for each 100 occupants or fraction thereof.

(f) Post as, "Unsafe for drinking," non-potable water that is accessible to occupants. The posting must be in the language of the camp occupants or with a universal symbol.

(g) Portable water containers with spigots and tight fitting lids are acceptable for providing and storing drinking water in the housing.

(A) These containers must be made of impervious non-toxic materials that protect the water from contamination.

(B) Wash and sanitize them at least every 7 days.

(h) Do not use containers such as barrels, pails or tanks that require dipping or pouring to get the water.

(i) Do not use cups, dippers or other utensils for common drinking purposes.

(j) Do not allow cross connection between a system furnishing water for drinking purposes and a non-potable supply.

(8) Bathing, hand washing, laundry, and toilet facilities – General.

(a) Provide an adequate supply of hot and cold water under pressure for all common use bathing, hand washing, and laundry facilities at all labor housing and related facilities.

(b) In installations with bathing, laundry facilities, or flush toilets, the floor and walls must be of readily cleanable finish and impervious to moisture.

(c) All common use bathing, hand washing, and laundry facilities must be clean, sanitary and operating properly.

(d) Buildings for common use bathing, hand washing, laundry, and toilet facilities must have heating capable of keeping the facility at 68 degrees or more during use.

(9) Bathing facilities.

(a) Provide drains in all showers to remove waste water. Slope floors so they drain. Do not use slippery materials for flooring.

Note: Paragraph (b) is effective April 1, 2009. Until then the old ratio of 1 to 15 applies.

(b) Provide at least one shower head with hot and cold water under pressure for every 10 occupants or fraction thereof.

(A) Unisex shower rooms are acceptable in the same ratios. They must have working locks and provide privacy.

(c) Separate common use bathing facilities used for both sexes in the same building by a solid, non-absorbent wall extending from the floor to the ceiling.

(d) Mark separate sex bathing facilities, if provided, with "women" and "men" in English and in the native language of employees expected to occupy the housing or with easily understood pictures or symbols.

(10) Hand washing facilities.

ADMINISTRATIVE RULES

Note: Paragraph (a) is effective April 1, 2009. Until then the old ratio of 1 to 15 applies.

(a) Provide at least one hand washing sink or basin with hot and cold water under pressure for every 6 occupants or fraction thereof. Each 24 linear inches of "trough" type sink with individual faucets counts as one basin. When each living unit does not have hand washing facilities, locate common use facilities either close to the toilet facilities or close to the sleeping places.

Note: Sinks in food preparation areas can count toward only half of this requirement.

(b) In common use facilities, do not use a single common towel. If you provide paper towels, there must be a container for their disposal.

(11) Laundry facilities.

NOTE: Paragraph (a) is effective April 1, 2009. Until then the old rule applies.

(a) Provide laundry trays, tubs, or machines with plumbed hot and cold water in the combined ratio of 1 for each 30 occupants or each part of 30.

(b) Provide clothes lines or drying facilities to serve the needs of the occupants.

(c) Laundry rooms must have drains to remove waste water.

(d) Each common use laundry room must have a slop sink.

(12) Toilet facilities.

(a) Locate toilet facilities in labor housing and related facilities within 200 feet from the living area that they serve.

(b) Locate toilets, chemical toilets, or urinals in rooms built for that purpose.

(c) Maintain a usable, unobstructed path or walkway free of weeds, debris, holes or standing water from each living area to the common use toilet facilities.

(d) Provide at least one toilet for every 15 occupants or fraction thereof for each gender in the labor housing. Toilets must assure privacy.

(A) If urinals are in the toilet facility and where three or more toilets are required for men, one urinal substitutes for one toilet (24 inches of trough-type urinal equals one urinal), to a maximum of one-third of the total required toilets.

(B) Existing urinals must be non-absorbent, non-corrosive materials that have a smooth and cleanable finish. Urinals installed after the effective date of this standard must meet Oregon state building code.

(C) If there are no common use toilet facilities, calculate the required ratio without regard to gender.

(e) Clean common use toilet facilities daily or more often when needed to maintain sanitation.

(f) Mark separate sex toilet facilities, when provided, with "women" and "men" in English and in the native language of employees expected to occupy the housing or with easily understood pictures or symbols.

(g) Ventilate all labor housing toilet rooms according to the Oregon state building code.

(h) Separate common use toilet facilities used for both sexes in the same building by a solid, non-absorbent wall extending from the floor to the ceiling.

(i) Install privacy partitions between each individual toilet or toilet seat in multiple toilet facilities. The partitions may be less than the height of the room walls.

(A) The top of the partition must be not less than 6 feet from the floor and the bottom of the partition not more than 1-foot from the floor. The width of the partition must extend at least 1 1/2 feet beyond the front of the toilet seat.

(B) Provide a door or curtain so the toilet compartment is private.

(j) Provide common use toilet facilities with toilet paper and holders or dispensers. Also provide disposal containers with lids.

(k) Do not allow obstruction of the path or access to a toilet room. If access is through another room, that room must not be lockable.

(13) Portable toilets, chemical toilets and privies.

(a) The location and construction of privies must conform to Oregon Department of Environmental Quality standards.

(b) Privies must be at least 100 feet from any living area or any facility where food is prepared or served.

(c) Portable toilets and privies must have adequate lighting.

(d) When in use, service portable and chemical toilets at least weekly or often enough to keep them from becoming a health hazard. Clean portable toilets, chemical toilets and privies at least daily.

(14) Sewage disposal and plumbing.

(a) Connect the sewer lines from the labor housing and related facilities to a community sewer system, a septic tank with subsurface disposal of the effluent, pit type privies or other sanitary means conforming to Department of Environmental Quality standards.

(b) Install all plumbing in labor housing and related facilities to comply with Department of Environmental Quality standards and the Oregon state building code.

(15) Garbage and refuse disposal outside of buildings.

NOTE: Recyclable material is not garbage or refuse referred to in this section (15).

(a) Keep refuse and garbage containers clean and in good repair.

(b) Provide at least one 30-gallon or larger container per 15 occupants. Containers must be inside the housing site area and accessible to all occupants.

(c) Empty garbage bins and dumpsters at least weekly during use, but always before they become a health hazard or full enough to interfere with full closing of the lid.

(d) Empty common use cans and portable containers into a bin or dumpster, when full or twice weekly whichever is more frequent. Do not allow garbage on the ground.

(e) Keep all refuse and garbage containers covered and the garbage storage area clean to control flies and rodents.

(f) Do not burn any food, garbage or wet refuse.

(g) Dispose of garbage and refuse according to Department of Environmental Quality standards that govern the disposal of garbage, refuse and other solid wastes.

(16) Living areas.

(a) Keep all living areas, safe and in good repair structurally and stable on their foundations. They must provide shelter for the occupants against the elements and protect the occupants from ground and surface water as well as rodents and insects.

(b) The walls and roof must be tight and solid. Floors must be rigid and durable, with a smooth and cleanable finish in good repair.

(c) For living areas without a working permanent heating system or heaters, the ALH operator must supply portable heaters at no cost to the occupant. These heaters must be capable of keeping the temperature in the living area at a minimum of 68 degrees. Heaters must meet these requirements:

(A) Operate by electricity only.

(B) Not be the resistance, ribbon type nor any other type that uses a glowing element as the heat source.

(C) Have working safety devices installed by the manufacturer for the particular type heater.

(D) Be in good working order with no defects or alterations that make them unsafe.

(d) Permanently installed solid fuel or gas fired heaters must meet the following:

(A) Install and vent any stoves or other sources of heat that use combustible fuel to prevent fire hazards and dangerous concentration of gases.

(i) Solid or liquid fuel heaters or stoves installed on or before December 15, 1989, must sit on a concrete slab, insulated metal sheet or other fire resistant material when used in a room with wood or other combustible flooring. Extend it at least 18 inches beyond the perimeter of the base of the stove.

(ii) Solid or liquid fuel heaters or stoves must meet the manufacturer's specifications and the Oregon state building code in effect at the time of installation.

(B) Install fire resistant material on any wall or ceiling within 18 inches of a solid or liquid fuel stove or a stove pipe. Provide a vented metal collar around the stovepipe, or vent passing through a wall, ceiling, floor or roof or combustible material.

(C) Heating systems with automatic controls must cut off the fuel supply on failure or interruption of the flame or ignition, or when they exceed a pre-determined safe temperature or pressure.

(D) All gas appliances and gas piping must comply with the Oregon state building code in effect at time of installation and the manufacturer's instructions.

(E) Do not locate stoves so they block escape from a sleeping place.

(e) Provide screens of at least 16 mesh on the doors and windows of the living area. All screen doors must be tight-fitting, in good repair, and self-closing.

(f) Provide beds, bunks or cots for each occupant and suitable storage facilities, such as wall cabinets or shelves, for each occupant or family unit.

(A) The camp operator must provide a mattress or pad for each bed or bunk.

(i) If you provide foam pads, they must be thicker than 2 inches.

(ii) Do not provide uncovered foam pads.

(iii) Mattresses or pads must not sit on the floor.

(iv) The sleeping surface must be at least 12 inches above the floor.

ADMINISTRATIVE RULES

(g) Mattresses or pads furnished by the camp operator must be clean, in good repair, and free from insects and parasites.

(A) Fumigate mattresses or pads, used uncovered, or treat with an effective insecticide before each season's occupancy. If you provide covers, clean them before each season's occupancy.

(B) Store mattresses or pads in a clean, dry place.

(h) Space the beds, bunks or cots so that there is enough room to allow for rapid and safe exiting during an emergency.

Note: Do not count children 2 years old and younger when calculating square footage requirements in paragraphs (i), (j), (k), and (l).

(i) In living areas built after August 1, 1975, where workers cook, live, and sleep, provide at least 100 square feet per occupant.

(j) In living areas built before August 1, 1975, where workers cook, live and sleep, provide at least 60 square feet per occupant.

(k) Each sleeping room without double bunk beds must have at least 50 square feet of floor space per employee. Where there are double bunk beds, provide 40 square feet per occupant. Do not use triple bunks.

NOTE: When a sleeping room is part of a living area, the square footage of the sleeping rooms counts as part of the living area requirement.

(l) Beginning on January 1, 2018 all agricultural labor housing, where workers cook, live and sleep in the same area, must provide 100 square feet per occupant.

(m) For units built after April 3, 1980 at least one-half the required floor space in each living area must have a minimum ceiling height of 7 feet. Floor space with a ceiling height less than 5 feet does not count toward the minimum required floor space.

(n) Beginning on January 1, 2018 only areas with a 7 foot ceiling height will count toward the required square footage of any living or sleeping area.

(o) Provide separate private sleeping areas for unrelated persons of each sex and for each family unit.

Note: Paragraph (p) is effective April 1, 2009.

(p) Provide windows or skylights with a total area equal to at least 10 percent of the required floor area. At least one-half (nominal) the total required window or skylight area must be openable to the outside. Adequate mechanical ventilation may substitute for openable window space. Not more than one-half the required space can be met with skylights. Openable, screened windows in doors count toward this requirement.

(q) Before occupancy clean all living areas and eliminate any rodents, insects, and animal parasites.

(17) Fire protection.

(a) All fires must be in equipment designed for that use. Do not allow open fires within 25 feet of structures.

(b) Each season, at the time of initial occupancy, each living area must have a working approved smoke detector.

NOTE: The camp operator is not responsible for daily maintenance of the detector or the actions of occupants that defeat its function.

(c) Provide fire extinguishing equipment in a readily accessible place, not more than 50 feet from each housing unit. The equipment must provide protection equal to a 2A:10BC rated extinguisher.

NOTE: Hoses are acceptable substitutes for extinguishers only if the water supply is constant and reliable. Hoses must be immediately available for firefighting use.

(d) All living areas with more than one room, built before December 15, 1989, with one door, must have, in addition to a door, a window in each sleeping room that can be an exit in case of fire.

(A) This window must have an openable space at least 24 inches by 24 inches, nominal.

(B) The lowest portion of the opening must be less than 48 inches above the floor.

(C) This window must open directly to the outdoors and be readily openable by the occupants from inside without breaking the glass.

(D) Label the escape window as an emergency exit.

(e) Living areas built on or after December 15, 1989, must meet the requirements for emergency exits in applicable rules of the Building Codes Division of the Oregon Department of Consumer and Business Services, including the following:

(A) Required emergency exit windows in sleeping rooms must have a clear net opening of at least 5.7 square feet, minimum vertical opening of 22 inches and minimum horizontal opening of 20 inches.

NOTE: Construct and maintain all living areas in labor housing and related facilities to comply with other applicable local and state laws and regulations in effect at the time of construction or remodel.

(f) A second story must have at least two exits when its occupant load is 10 or more. Comply with the Oregon State Building Code.

(g) Occupants on floors above the second story and in basements must have access to at least two separate exits from the floor or basement as required by the Oregon State Building Code.

(18) Common use cooking and eating facilities and equipment.

(a) When provided, common use cooking or food preparation facilities or equipment must have the following:

(A) A gas or electric refrigerator, capable of keeping food at or below 41 degrees F.

(B) A minimum equivalent of two cooking burners for every 10 persons or part thereof or 2 families, whichever requires the most burners.

(i) If a gas or electric hotplate or wood stove is within 18 inches of a wall, that wall must be made of or finished with smooth cleanable, nonabsorbent, grease-resistant and fire-resistant material.

NOTE: Labeled and listed appliances are exempt from the 18-inch requirement when installed according to their listing.

(C) No liquid petroleum gas (LPG like propane) tanks in use inside any occupied building. Outside tanks must connect to appliances with lines approved for that purpose.

(D) Food storage shelves, food preparation areas, food contact surfaces and floors in food preparation and serving areas must be made of or finished with smooth, non-absorbent, cleanable material; and

(E) A table and chairs or equivalent seating and eating arrangements to accommodate the number of occupants living in the sleeping place.

(b) Refrigerators and stoves or hot plates must always be in working condition.

(c) Clean the facilities and equipment before each occupancy.

(d) Common use kitchen and dining areas must be separate from all sleeping quarters. There can be no direct opening between kitchen or dining areas and any living or sleeping area.

(e) If the operator becomes aware of or has reason to suspect that anybody preparing, cooking or serving food has a communicable disease as listed in paragraph (22), the operator must bar them from the cooking facility until the disease is no longer communicable.

(f) Buildings must have heating capable of keeping the facility at 68 degrees or more during use.

(19) Dining halls and equipment.

(a) When provided, dining halls or equipment must have the following:

(A) A gas or electric refrigerator, capable of keeping food at or below 41 degrees F.

(B) A minimum equivalent of two cooking burners for every 10 persons or part thereof, 2 families whichever requires the most burners.

(i) If a gas or electric hotplate or wood stove is within 18 inches of a wall, that wall must be made of or finished with smooth cleanable, nonabsorbent, grease-resistant and fire resistant material.

NOTE: Labeled and listed appliances are exempt from the 18-inch requirement when installed according to their listing.

(C) No liquid petroleum gas (LPG like propane) tanks in use inside any occupied building. Outside tanks must connect to appliances with lines approved for that purpose.

(D) Food storage shelves, food preparation areas, food contact surfaces and floors in food preparation and serving areas must be made of or finished with smooth, non-absorbent, cleanable material; and

(E) A table and chairs or equivalent seating and eating arrangements to accommodate the number of occupants living in the sleeping place.

(b) Refrigerators and stoves or hot plates must always be in working condition.

(c) Clean the facilities and equipment before each occupancy.

(d) Common use kitchen and dining areas must be separate from all sleeping quarters. There can be no direct opening between kitchen or dining areas and any living or sleeping area.

(e) If the operator becomes aware of or has reason to suspect that anybody preparing, cooking or serving food has a communicable disease as listed in paragraph (22), the operator must bar them from the cooking facility until the disease is no longer communicable.

(f) Buildings must have heating capable of keeping the facility at 68 degrees or more during use.

(g) The facility must comply with the 2005 edition of the FDA Food Code. **NOTE:** Follow Division 4, Agriculture when it differs from the FDA Food Code. The code is available at: <http://www.cfsan.fda.gov/~dms/food-code.html> or contact the Oregon OSHA Resource Center at 800-922-2689 or in Salem 503-378-3272.

(20) Single Unit Cooking Facilities.

(a) When provided, single unit cooking, eating and dining facilities or equipment must have the following:

(A) A gas or electric refrigerator, capable of keeping food at or below 41 degrees F.

(B) A minimum equivalent of two burners for cooking for every 10 persons or part thereof, or 2 families, whichever requires the most burners.

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(i) If a gas or electric hotplate or wood stove is within 18 inches of a wall, that wall must be made of or finished with smooth cleanable, non-absorbent, grease-resistant and fire resistant material.

NOTE: Labeled and listed appliances are exempt from the 18-inch requirement when installed according to their listing.

(C) No liquid petroleum gas (LPG like propane) tanks in use inside. Outside tanks must connect to appliances with lines approved for that purpose.

(D) Food storage shelves, food preparation areas, food contact surfaces and floors in food preparation and serving areas made of or finished with smooth, non-absorbent, cleanable material.

(E) A table and chairs or equivalent seating and eating arrangements to accommodate the number of occupants living in the sleeping place.

(F) A refrigerator and stove or hot plate in working condition.

(b) Clean the facilities before each occupancy.

(21) First aid. OAR 437-004-1305, Medical and First Aid, applies to all labor housing and related facilities. This rule includes requirements for first aid supplies, an emergency medical plan and a plan of communication.

NOTE: Division 4K requires all employees know about the first aid requirements and emergency medical plans. If employees' native language is other than English, this must be taken into account in meeting this requirement.

(22) Disease Reporting. The camp operator must comply with OAR 333-018-0000, Who Must Report and OAR 333-018-0015, What To Report And When: 333-018-0000 Who Must Report Each Health Care Provider knowing of or attending a case or suspected case of any of the diseases, infections, or conditions listed in OAR 333-018-0015 shall report such cases as specified. Where no Health Care Provider is in attendance, any individual knowing of such a case shall report in a similar manner. 333-018-0015 What to Report and When Reportable diseases, infections, microorganisms, and conditions, and the time frames within which they must be reported are as follows:

(a) Immediately, day or night: Bacillus anthracis (anthrax); Clostridium botulinum (botulism); Corynebacterium diphtheriae (diphtheria); Severe Acute Respiratory Syndrome (SARS) and infection by SARS-coronavirus; Yersinia pestis (plague); intoxication caused by marine microorganisms or their byproducts (for example, paralytic shellfish poisoning, domoic acid intoxication, ciguatera, scombroid); any known or suspected common-source outbreaks; any Uncommon Illness of Potential Public Health Significance.

(b) Within 24 hours (including weekends and holidays): Haemophilus influenzae (any invasive disease; for laboratories, any isolation or identification from a normally sterile site); measles (rubeola); Neisseria meningitidis (any invasive disease; for laboratories, any isolation or identification from a normally sterile site); Pesticide Poisoning; poliomyelitis; rabies (human or animal); rubella; Vibrio (all species).

(c) Within one Local Public Health Authority working day: Bordetella pertussis (pertussis); Borrelia (relapsing fever, Lyme disease); Brucella (brucellosis); Campylobacter (campylobacteriosis); Chlamydia (Chlamydia) psittaci (psittacosis); Chlamydia trachomatis (chlamydia); lymphogranuloma venereum; Clostridium tetani (tetanus); Coxiella burnetii (Q fever); Creutzfeldt-Jakob disease and other transmissible spongiform encephalopathies; Cryptosporidium (cryptosporidiosis); Cyclospora cayentanensis (cyclosporiasis); Escherichia coli (Shiga-toxigenic, including E. coli O157 and other serogroups); Francisella tularensis (tularemia); Giardia (giardiasis); Haemophilus ducreyi (chancroid); hantavirus; hepatitis A; hepatitis B (acute or chronic infection); hepatitis C; hepatitis D (delta); HIV infection (does not apply to anonymous testing) and AIDS; Legionella (legionellosis); Leptospira (leptospirosis); Listeria monocytogenes (listeriosis); mumps; Mycobacterium tuberculosis and M. bovis (tuberculosis); Neisseria gonorrhoeae (gonococcal infections); pelvic inflammatory disease (acute, non-gonococcal); Plasmodium (malaria); Rickettsia (all species: Rocky Mountain spotted fever, typhus, others); Salmonella (salmonellosis, including typhoid); Shigella (shigellosis); Taenia solium (including cysticercosis and undifferentiated Taenia infections); Treponema pallidum (syphilis); Trichinella (trichinosis); Yersinia (other than pestis); any infection that is typically arthropod vector-borne (for example: Western equine encephalitis, Eastern equine encephalitis, St. Louis encephalitis, dengue, West Nile fever, yellow fever, California encephalitis, ehrlichiosis, babesiosis, Kyasanur Forest disease, Colorado tick fever, etc.); human bites by any other mammal; CD4 cell count < 200/mm³ or CD4 proportion of total lymphocytes < 14%; hemolytic uremic syndrome.

(d) Within 7 days: Suspected Lead Poisoning (for laboratories; this includes all blood lead tests performed on persons with suspected lead poisoning).

(23) Access to ORS and OAR. Those wishing access to any of the Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR) referenced here, may contact the Oregon OSHA Resource Center in Salem or the nearest Oregon OSHA Field Office.

(24) Closure and alternative housing.

(a) The operator of agricultural labor housing must provide replacement lodging without charge to the occupants if a government agency with the authority to enforce building, health or safety standards declares the housing or facilities to be uninhabitable and orders them vacated.

(b) The operator must provide replacement lodging for 7 consecutive days from the time the housing was closed or until the closing agency allows the original housing to reopen, whichever is shorter.

(c) Replacement lodging must meet or exceed the health and safety standards of Oregon OSHA. Oregon OSHA must approve the location of the replacement housing before employees are sent to it.

(d) Operators must arrange for replacement lodging not later than the end of the day the original housing closes or another date designated by the closing agency.

(e) Post the address of the replacement housing:

(A) Not later than the end of the day the original housing closes.

(B) In a place convenient to affected workers.

(C) In all languages spoken by the occupants.

(f) The posting in (e) above must state that the replacement housing is free to occupants of the closed housing.

(g) The operator must give Oregon OSHA a list of names of the occupants and the location of the replacement housing, for each.

(h) When the cause of the closure is beyond the control of the agricultural labor housing operator, sections (a), (b), (c), (d), (e) and (g) above do not apply. To determine whether the cause of closure was beyond the control of the operator, Oregon OSHA will consider these circumstances, including but not limited to:

(A) Whether the cause of the closure is a natural disaster;

(B) Whether the circumstances leading to the closure were known or should have been known to the operator;

(C) Whether operator diligence could have avoided the circumstances leading to the closure.

(i) Agricultural labor housing occupants entitled to temporary replacement housing under this rule must accept or reject that housing when the original housing closes. These rules do not obligate operators to reimburse displaced occupants for housing they obtain without the operator's knowledge or consent.

(A) The operator is responsible for replacement lodging only for as many people as occupied the original closed housing. When an occupant rejects the replacement housing, the operator has no obligation to reimburse that occupant for other replacement housing.

(j) Oregon OSHA may issue a citation and assess a monetary penalty for violation of these rules as in ORS 654.071 and 654.086.

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

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

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 5-2000, f. 5-18-00, cert. ef. 6-1-00;

OSHA 4-2008, f. 3-24-08, cert. ef. 5-1-08

Department of Corrections

Chapter 291

Rule Caption: Marriages or Domestic Partnership Solemnization Ceremonies for Inmates in DOC Facilities.

Adm. Order No.: DOC 5-2008(Temp)

Filed with Sec. of State: 4-1-2008

Certified to be Effective: 4-1-08 thru 9-28-08

Notice Publication Date:

Rules Amended: 291-133-0005, 291-133-0010, 291-133-0015, 291-133-0025, 291-133-0035

Rules Suspended: 291-133-0045

Subject: The amendments are necessary to modify the rules to comply with HB 2007 (Oregon Family Fairness Act), and permit inmates who have entered into a domestic partnership to participate in a solemnization ceremony in a department of Corrections facility.

Rules Coordinator: Janet R. Worley—(503) 945-0933

ADMINISTRATIVE RULES

291-133-0005

Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 137.285, 179.040, 423.020, 423.030, and 423.075, and 2007 Or Laws, Chapter 99.

(2) Purpose: To establish Department of Corrections policies and procedures regarding inmate marriages or solemnization ceremonies for inmates that have established a domestic partnership, conducted in a Department of Corrections facility.

(3) Policy: Within the inherent limitations of resources, and the need for facility security, safety, health and good order, it is the policy of the Department of Corrections to permit an inmate to marry a person of the opposite sex in an ODOC correctional facility, including another inmate, and to permit an inmate that has established a domestic partnership to participate in a solemnization ceremony in a Department of Corrections facility, provided that the marriage or domestic partnership is otherwise legal under Oregon law, and is not inconsistent with the safe, secure and orderly operation of a Department of Corrections facility, inmate rehabilitation, or other penological interest.

Stat. Auth.: ORS 137.285, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.285, 179.040, 423.020, 423.030, 423.075 & 2007 OL Ch. 99
Hist.: CD 31-1978, f. 10-24-78, ef. 10-25-78; CD 18-1981(Temp), f. & ef. 6-30-81; CD 50-1981, f. & ef. 10-30-81; CD 58-1985, f. & ef. 8-16-85; CD 48-1986, f. & ef. 11-20-86; CD 22-1991, f. & cert. ef. 9-20-91; CD 11-1993(Temp), f. 4-21-93, cert. ef. 4-26-93; CD 28-1993, f. 10-22-93, cert. ef. 10-23-93; DOC 5-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

291-133-0010

Definitions

(1) Applicant: For the purposes of these rules, "applicant" refers to an inmate incarcerated in a Department of Corrections facility who submits a Request for Inmate Marriage or Domestic Partnership Solemnization Ceremony form.

(2) Death Row Status: An inmate who has received a sentence of death and is assigned to Death Row Housing.

(3) Department of Corrections Facility: Any institution, facility, or staff office, including the grounds, operated by the Department of Corrections.

(4) Domestic Partner: An individual joined in a domestic partnership.

(5) Domestic Partnership: A civil contract entered into in person between two individuals of the same sex who are at least 18 years of age, who are otherwise capable and at least one of whom is a resident of Oregon, which has been filed with the County Clerk and entered in the domestic partnership registry.

(6) Immediate Family Member: Spouse or domestic partner, father, mother, sister, brother, daughter, son, and grandparents, including foster, in-law, step-relationships and domestic partners of other named immediate family.

(7) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision, or probation status.

(8) Solemnization Ceremony: A ceremony to celebrate the establishment of a domestic partnership.

Stat. Auth.: ORS 137.285, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.285, 179.040, 423.020, 423.030, 423.075 & 2007 OL Ch. 99
Hist.: CD 31-1978, f. 10-24-78, ef. 10-25-78; CD 18-1981(Temp), f. & ef. 6-30-81; CD 50-1981, f. & ef. 10-30-81; CD 58-1985, f. & ef. 8-16-85; CD 48-1986, f. & ef. 11-20-86; CD 22-1991, f. & cert. ef. 9-20-91; CD 11-1993(Temp), f. 4-21-93, cert. ef. 4-26-93; CD 28-1993, f. 10-22-93, cert. ef. 10-23-93; DOC 8-2002, f. & cert. ef. 6-12-02; DOC 5-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

291-133-0015

Marriage or Domestic Partnership Solemnization Ceremony Application, Approval, and Eligibility Requirements

(1) An inmate incarcerated in a Department of Corrections facility wishing to marry or have a domestic partnership solemnization ceremony may obtain necessary forms from designated staff.

(2) Marriages and domestic partnership solemnization ceremonies in a Department of Corrections facility will occur two times per year on the fourth Mondays of April and October.

(3) A Request for Inmate Marriage or Domestic Partnership Solemnization Ceremony form must be submitted for approval to designated staff at least six weeks prior to the scheduled marriage or ceremony date.

(a) An inmate requesting a solemnization ceremony must also submit a certified copy of the inmate's Declaration of Domestic Partnership registered with the County Clerk's Office.

(b) Designated staff shall approve or disapprove the request within 15 working days following receipt, except that approval or disapproval may be delayed for up to 30 working days if the accuracy of the information pro-

vided on the Request for Inmate Marriage or Domestic Partnership Solemnization Ceremony form is in doubt.

(4) An applicant and prospective spouse, and an applicant's domestic partner, must meet the following eligibility requirements:

(a) The applicant is confined in a Department of Corrections facility at the time of the application and remains so until the marriage or domestic partnership solemnization ceremony.

(b) The applicant has no major disciplinary misconduct sanctions six weeks prior to the marriage or domestic partnership solemnization ceremony date and remains without any such sanctions until the marriage or domestic partnership solemnization ceremony.

(c) Neither the marriage applicant nor the applicant's prospective spouse is currently married, mentally incapacitated, of blood relation of first cousins or closer, or of the same sex.

(d) Both the applicant and prospective spouse, or the applicant's domestic partner, are approved for privileged visitation under the Department of Corrections' rule on Visiting (Inmate) (OAR 291-127) at the time of the application, or if not at the time of the application, at least six weeks prior to the scheduled marriage or domestic partnership solemnization ceremony date and remain so qualified until the marriage or domestic partnership solemnization ceremony date. This eligibility requirement for privileged visiting may be waived for an applicant who is assigned to administrative segregation status for reasons of protective custody, or for an applicant who is on death row status.

(e) The applicant, whether indigent or not, accepts responsibility for all fees incurred related to the marriage or domestic partnership solemnization ceremony process, such as the marriage license fee and ceremony expenses.

(f) The necessary procedures for the issuance of a marriage license and performance of the marriage ceremony, or for the performance of the solemnization ceremony, is not inconsistent with the safe, secure and orderly operation of the Department of Corrections facility, inmate rehabilitation, or other penological interest.

(g) Approval may be withdrawn by the functional unit manager, or by designated staff, if the applicant later becomes ineligible.

Stat. Auth.: ORS 137.285, 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.285, 179.040, 423.020, 423.030, 423.075 & 2007 OL Ch. 99
Hist.: CD 31-1978, f. 10-24-78, ef. 10-25-78; CD 18-1981(Temp), f. & ef. 6-30-81; CD 50-1981, f. & ef. 10-30-81; CD 28-1983, f. & ef. 7-11-83; CD 58-1985, f. & ef. 8-16-85; CD 48-1986, f. & ef. 11-20-86; CD 22-1991, f. & cert. ef. 9-20-91; CD 11-1993(Temp), f. 4-21-93, cert. ef. 4-26-93; CD 28-1993, f. 10-22-93, cert. ef. 10-23-93; DOC 8-2002, f. & cert. ef. 6-12-02; DOC 5-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

291-133-0025

Marriage or Domestic Partnership Solemnization Ceremony

(1) Staff will arrange for the marriage or domestic partnership solemnization ceremony to be scheduled in the area designated after all necessary forms are processed and confirmations have been made.

(2) All guests (including participants) attending the marriage or domestic partnership solemnization ceremony must be approved for privileged visiting in accordance with the Department of Corrections rule on Visiting (Inmate) (OAR 291-127) on the day of the ceremony. In accordance with OAR 291-133-0015(4)(d), this requirement may be waived for an applicant who is assigned to administrative segregation status for reasons of protective custody, or for an applicant who is on death row status.

(a) All guests will be processed into the institution in accordance with procedures for regular privileged visiting.

(b) A maximum of ten guests (not including the official performing the marriage or individual conducting the domestic partnership solemnization ceremony) will be permitted to attend the ceremony with the applicants.

(3) An inmate who is an immediate family member of the bride or groom or domestic partner may attend the marriage or domestic partnership solemnization ceremony only if he/she is housed at the facility where the wedding or ceremony is being held.

(4) Designated staff will notify the inmate and appropriate staff when arrangements for the marriage or domestic partnership solemnization ceremony have been finalized.

(5) No food, cameras, flowers, or special clothing may be brought into a Department of Corrections facility for inmate marriages or domestic partnership solemnization ceremonies.

(6) Inmates will be permitted to wear a plain wedding or domestic partner band, which shall be recorded on the inmate's personal property list.

(7) The applicant or prospective spouse or applicant's domestic partner will have the responsibility of contacting the clergy or other licensed person(s) to perform the marriage or solemnization ceremony.

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(8) The schedule of marriages or domestic partnership solemnization ceremonies will be arranged by designated staff.

(9) The designated staff member will assure that appropriate reports are submitted.

Stat. Auth.: ORS 137.285, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137.285, 179.040, 423.020, 423.030, 423.075 & 2007 OL Ch. 99
Hist.: CD 11-1993(Temp), f. 4-21-93, cert. ef. 4-26-93; CD 28-1993, f. 10-22-93, cert. ef. 10-23-93; DOC 8-2002, f. & cert. ef. 6-12-02; DOC 5-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

291-133-0035

Inmate-to-Inmate Marriages and Domestic Partnership Solemnization Ceremonies

(1) An applicant satisfying the eligibility requirements of OAR 291-133-0015 may be permitted to marry another applicant who satisfies these requirements.

(2) All inmate-to-inmate marriages shall be conducted at the Coffee Creek Correctional Facility, except male death row status inmates, whose marriages which shall take place at the Oregon State Penitentiary (Penitentiary).

(3) For marriages, staff at department facilities other than Coffee Creek Correctional Facility shall coordinate with staff at the Coffee Creek Correctional Facility at least four weeks in advance of the marriage ceremony date.

(4) For inmate to inmate domestic partnership solemnization ceremonies, staff will coordinate at least four weeks in advance of the marriage ceremony to make arrangements for the ceremony.

(5) Transportation of applicants for inmate-to-inmate marriage and domestic partnership solemnization ceremonies will be coordinated through the Classification and Transfer Unit.

Stat. Auth.: ORS 137.285, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137.285, 179.040, 423.020, 423.030, 423.075 & 2007 OL Ch. 99
Hist.: CD 11-1993(Temp), f. 4-21-93, cert. ef. 4-26-93; CD 28-1993, f. 10-22-93, cert. ef. 10-23-93; DOC 8-2002, f. & cert. ef. 6-12-02; DOC 5-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

291-133-0045

Visiting

Marriage does not affect the visiting privileges of inmates (including applicants), spouses or prospective spouses. All visiting privileges are governed by the Department of Corrections rules on Visiting (Inmate) (OAR 291-127).

Stat. Auth.: ORS 137.285, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137.285, 179.040, 423.020, 423.030 & 423.075
Hist.: CD 11-1993(Temp), f. 4-21-93, cert. ef. 4-26-93; CD 28-1993, f. 10-22-93, cert. ef. 10-23-93; Suspended by DOC 5-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

Rule Caption: Inclusion of Domestic Partner in the Definition of Immediate Family for Inmates Assigned to Disciplinary Segregation.

Adm. Order No.: DOC 6-2008(Temp)

Filed with Sec. of State: 4-1-2008

Certified to be Effective: 4-1-08 thru 9-28-08

Notice Publication Date:

Rules Amended: 291-011-0010

Subject: The rule amendment is necessary to modify the rule to comply with HB 2007 (Oregon Family Fairness Act). This will permit inmates assigned to disciplinary segregation to visit with their domestic partner, as well as other immediate family members.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-011-0010

Definitions

(1) Close Supervision Status: Placement of an inmate so that he/she is more restricted than other inmates in disciplinary segregation status. This status is designated for inmates whose actions disrupt the safe and orderly operation of disciplinary segregation.

(2) Disciplinary Segregation: The placement of an inmate in a housing program status which separates him/her from the main population of the facility in accordance with Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(3) Disciplinary Segregation Supervisor: That person designated by the functional unit manager to oversee the daily operation of the Disciplinary Segregation Unit (DSU).

(4) Domestic Partner: An individual joined in a domestic partnership.

(5) Domestic Partnership: A civil contract entered into in person between two individuals of the same sex who are at least 18 years of age,

who are otherwise capable and at least one of whom is a resident of Oregon, which has been filed with the County Clerk and entered in the domestic partnership registry.

(6) Dry Cell Status: A visual inspection process which, after reasonable suspicion has been established, allows for the placement of an inmate in a cell for the safe recovery of internally concealed foreign substances, instruments, and other contraband.

(7) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, or Assistant Director, or administrator and has responsibility for the delivery of program services or the coordination of program operations. In a correctional facility, the superintendent is the functional unit manager.

(8) Immediate Family Member: Spouse or domestic partner, father, mother, brother, sister, daughter, son, aunt, uncle, grandchildren and grandparents, including foster, in-law, step relationships and domestic partners of the other named immediate family.

(9) Long-Term Status: Any inmate confined in segregation status or in disciplinary segregation for 30 or more consecutive days.

(10) Mental Health Professional: An individual who by virtue of his/her education, credentials, and experience is permitted to care for the mental health needs of patients. This includes, but is not limited to, psychiatrists, psychologists, psychiatric social workers and psychiatric nurse practitioners.

(11) Officer-in-Charge: That person designated by the functional unit manager to supervise the facility and make operational decisions in accordance with rule or procedure during periods when the functional unit manager or officer-of-the-day are not readily available.

(12) Officer-of-the-Day: That person designated by the functional unit manager and approved by the Assistant Director for Operations or Institutions Administrator to act on behalf of the functional unit manager during non-business hours and other periods when the functional unit manager may be absent.

(13) Oregon Accountability Model: A plan composed of six components that is designed to strengthen the department's ability to hold inmates and offenders accountable for their actions and staff accountable for achieving the mission and vision of the department.

(14) Qualified Health Care Professional: This includes physicians, physician assistants, nurses, nurse practitioners, dentists, mental health professionals and others who by virtue of their education, credentials and experience are permitted by law to evaluate and care for patients.

(15) Reasonable Suspicion: An apparent state of objective facts and rational inferences drawn there from which would permit a reasonable and experienced correctional staff person to conclude that an inmate is possessing contraband or is committing a crime or rule violation or conspiring or attempting the same.

(16) Short-Term Status: Any inmate confined in segregation status or in disciplinary segregation less than 30 consecutive days.

Stat. Auth.: ORS 179.040, 423.020, 423.030, & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030, & 423.075
Hist.: CD 21-1978, f. & ef. 8-29-78; CD 33-1983, f. & ef. 10-14-83; CD 23-1985, f. & ef. 8-16-85; CD 18-1987(Temp), f. & ef. 3-5-87; CD 33-1987, f. & ef. 8-28-87; CD 19-1991, f. & cert. ef. 8-21-91; DOC 10-2001, f. & cert. ef. 3-21-01; DOC 11-2006, f. 10-12-06, cert. ef. 10-16-06; DOC 6-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

Rule Caption: Inclusion of Domestic partner in the Definition of Immediate Family for Inmates Assigned to the Intensive Management Unit.

Adm. Order No.: DOC 7-2008(Temp)

Filed with Sec. of State: 4-1-2008

Certified to be Effective: 4-1-08 thru 9-28-08

Notice Publication Date:

Rules Amended: 291-055-0010

Subject: The rule amendment is necessary to modify the rule to comply with HB 2007 (Oregon Family Fairness Act). This will permit inmates in the Intensive Management Unit to visit with their domestic partner, as well as other immediate family members.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-055-0010

Definitions

(1) Domestic Partner: An individual joined in a domestic partnership.

(2) Domestic Partnership: A civil contract entered into in person between two individuals of the same sex who are at least 18 years of age, who are otherwise capable and at least one of whom is a resident of Oregon,

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which has been filed with the County Clerk and entered in the domestic partnership registry.

(3) Immediate Family Member: Spouse or domestic partner, father, mother, brother, sister, daughter, son, aunt, uncle, grandchildren and grandparents, including foster, in-law, step relationships and domestic partners or other name immediate family.

(4) Intensive Management: The status of a maximum custody inmate assigned to special security housing and programs in a designated intensive management unit or cell separate from general population housing units and cells in Department of Corrections facilities.

(5) Officer-in-Charge: The person designated by the facility functional unit manager responsible for the daily operation of the IMU or IMU status cells.

(6) Serious Management Concerns: Participation either individually, or in a group, in 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 an immediate risk of escape, promoting or engaging in disruptive group behavior, promoting security threat group activities, or being involved in any other activity that could significantly threaten the safe and secure operation of the facility.

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

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

Hist.: CD 13-1991, f. & cert. ef. 6-7-911; CD 21-1994, f. 11-16-94, cert. ef. 12-1-94 ; DOC 20-2000, f. & cert. ef. 8-18-00; DOC 7-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

Rule Caption: Inclusion of Domestic Partner in the Definition of Immediate Family for Inmate Visitation, and Clarification of Visiting for Inmates in Administrative Housing.

Adm. Order No.: DOC 8-2008(Temp)

Filed with Sec. of State: 4-1-2008

Certified to be Effective: 4-1-08 thru 9-28-08

Notice Publication Date:

Rules Amended: 291-127-0210, 291-127-0260

Subject: The rule amendment is necessary to modify the rule to comply with HB 2007 (Oregon family fairness Act), and clarify visiting policies for inmates in Administrative Housing. Amendment to OAR 291-127-0010 will permit inmates certain special housing units and on basic visiting status to visit with their domestic partner, as well as other immediate family members. Amendment to OAR 291-127-0260 will permit inmates assigned to Administrative housing to visit with approved visitors in the inmate's visiting list.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-127-0210

Definitions

(1) Accompanied Visit: A type of visitation authorized by the Department of Corrections in its correctional facilities in which an inmate is permitted to visit with a minor child who remains in the company of an approved adult visitor with the written consent of the custodial parent or guardian.

(2) Basic Visiting: A type of visitation authorized by the Department of Corrections in its correctional facilities in which an inmate and an approved visitor are permitted to see and talk with each other on a scheduled basis for a reasonable period of time with no physical contact. Basic visiting may be authorized by the department to take place in person, or through the use of videoconferencing technology.

(3) Co-Defendant: A person who has been convicted of a crime in which the inmate had some involvement in the same criminal incident(s) which gave rise to the conviction, or who is currently the subject of a criminal prosecution for the same criminal incident(s) involving the inmate.

(4) Conspiracy: An agreement between an inmate and one or more persons to engage in, cause, or conceal a rule violation or criminal activity.

(5) 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.

(6) Contractor: Any person working or providing services in a Department of Corrections facility under a contractual arrangement to provide services to the department, or any person employed by private or public sector agencies who is serving under department-sanctioned special assignment to provide services or support to the department programs.

(7) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(8) Disrespect: Where a visitor directs hostile, sexual, abusive, or threatening language or gestures, verbal or written, towards or about another person.

(9) Disturbance: Conduct or activity which unnecessarily interferes with visitation operations, and/or which advocates, encourages, promotes or otherwise creates or poses a threat to the safety, security, health and good order of the facility, and/or the safety and security of inmates, staff, visitors, contractors or the community. A visitor commits a disturbance if he/she advocates, creates, engages in, maintains or promotes an annoying condition or disorder characterized by unruly, noisy, violent conduct which disrupts the orderly administration of the visiting process.

(10) Domestic Partner: An individual joined in a domestic partnership.

(11) Domestic Partnership: A civil contract entered into in person between two individuals of the same sex who are at least 18 years of age, who are otherwise capable and at least one of whom is a resident of Oregon, which has been filed with the County Clerk and entered in the domestic partnership registry.

(12) Employee: Any person employed full-time, part-time or on temporary appointment by the Department of Corrections.

(13) Excessive Contact: Prolonged or frequent contact between a visitor and an inmate which exceeds the brief embrace and kiss upon meeting and leaving, hand-holding, or holding of children specifically allowed. Excessive is not casual contact, but rather a pattern of contact beyond rule limits.

(14) Holiday: A day recognized and announced annually as a holiday. If the actual and generally recognized holiday differs from the day recognized by the Department of Administrative Services, the holiday recognized for purposes of this rule is the date indicated on the calendar.

(15) Immediate Family Member: Spouse or domestic partner, father, mother, sister, brother, daughter, son, and grandparents, including foster, in-law, step-relationships and domestic partners of other named immediate family.

(16) Inappropriate Relationship: A personal relationship between an inmate or offender and any employee, contractor, or volunteer of the Department of Corrections that developed during the course of employment/contract work/volunteering or as a result of same.

(17) Inmate: Any person under the supervision of Department of Corrections who is not on parole, post-prison supervision, or probation status.

(18) Intake Status: That period of time following delivery of an inmate to the custody of the Department of Corrections in which the department conducts its intake processing of the inmate including, but not limited to, the conduct of medical and mental health assessments, custody classification, and identification of programming needs and assignments.

(19) Privileged Visiting: A type of visitation authorized by the Department of Corrections in its correctional facilities in which an inmate and an approved visitor are permitted to see and talk with each other on a scheduled basis for a reasonable period of time with limited physical contact, consisting of a brief embrace and kiss upon meeting and leaving, hand holding, and holding of children.

(20) Reasonable Suspicion: An apparent state of objective facts and rational inferences drawn there from which would permit a reasonable and experienced correctional staff person to conclude that an individual or set of circumstances poses a threat to the safety, security, health and good order of the facility, and/or the safety and security of inmates, staff, visitors, contractors or the community, including, but not limited to, committing a crime or rule violation or conspiring or attempting the same.

(21) Search: A close inspection, including touching in an impartial manner, of a person, vehicle, possessions, or other property, or buildings or premises. For purposes of entering a correctional institution, searches often require the removal and separate inspection of shoes, belts, jackets, and other accessories during processing. Types of searches include the following:

(a) Consent: Inspection of a person or their property conducted with prior permission of the person being searched, or of a person who owns or has in his/her possession that property which is searched.

(b) Frisk: To search a person for something by running the hands over the clothed person, through the hair, inspecting pockets and cuffs, and other items in his/her possession.

(c) Skin: A search procedure wherein the person being searched removes all of his/her clothing and is visually examined and clothing removed is carefully inspected before return and redressing, for the purpose of detecting contraband.

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(22) Sexual Activity: Sexual contact including, but not limited to sexual intercourse, kissing, fondling, and/or manipulation of the genitalia, buttocks, and breasts of another person, or of oneself, in a manner which produces or is intended to produce sexual stimulation or gratification.

(23) Sex Crime Involving a Minor Child: Any conviction (including juvenile adjudications) of a sexual crime committed, attempted or conspired in which a minor child was involved, victimized, or the intended victim.

(24) Special Housing Status: Those inmates housed in one of the following areas:

- (a) Disciplinary Segregation;
- (b) Administrative Housing;
- (c) Special Management Unit (SMU);
- (d) Death row;
- (e) Infirmary;
- (f) Intensive Management Unit (IMU); or
- (g) Community Hospitalization.

(25) Special Visitation: Those visits listed below:

(a) A type of visitation authorized by the Department of Corrections in its correctional facilities in which an inmate is permitted to visit with a person who is not on the inmate's approved visiting list;

(b) An extra visit by an inmate and a person who is on the inmate's approved visiting list that is permitted beyond the limits on the number of visits established by these rules and the facility; and

(c) A visit that is permitted at an hour and/or place at which visits are not normally permitted.

(26) Spouse: A person who is legally married to an inmate.

(27) Termination of Visiting: The end of visiting privileges for the day by order of the visiting area staff or other authorized staff.

(28) Victim: A person who was subjected to direct harm or injury as a result of the criminal conduct of the inmate for which the inmate has been convicted, past or present, as identified in records or in information available to the Department of Corrections.

(29) Video Visiting: A type of visiting authorized by the Department of Corrections in which an inmate and an approved visitor are permitted to see and talk with each other on a scheduled basis through the use of video-conferencing technology. Video visitation may be used for basic visiting or as a supplement to on-site contact visiting.

(30) Volunteer: An approved person(s) who donates time, knowledge, skills and effort to enhance the mission, activities and programs of the department (includes practicums and interns). Volunteers serve at the pleasure of the department and are not considered employees.

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

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

Hist.: DOC 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05; DOC 8-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

291-127-0260

Time, Length, and Place of Visits

(1) The time, length, and place of visits shall be posted at the visiting desk and visiting room of each Department of Corrections facility.

(2) Termination of Visits: Visits may be terminated by the facility superintendent or designated staff at their discretion at any time due to space limitations or as deemed necessary to maintain the safety, security, health and good order of the facility, and/or the safety and security of other inmates, staff, visitors, contractors or the community.

(3) Visitors who engage in a disturbance or other inappropriate conduct as defined in these rules, or who loiter in or about a Department of Corrections facility, shall be subject to removal from the facility by department staff. The officer-in-charge of the facility may notify law enforcement officials for assistance if the visitor refuses to leave the facility when requested by department staff.

(4) Except for minimum-security facilities and the Oregon State Penitentiary, privileged visiting hours occur five days per week (Wednesday through Sunday), including state holidays. Due to physical plant design, work environment and/or staff level, facilities may limit or expand number of days, length, and time of visits at the discretion of the superintendent. The Oregon State Penitentiary will provide visits seven days per week.

(5) Inmates Assigned to General Population:

(a) Visitation for inmates assigned to general population shall take place during regular visiting hours.

(b) Except for minimum-security facilities, visitors will be accommodated on a first come, first serve basis. Facilities may schedule appointments for visiting.

(c) Basic Visiting: An inmate assigned to general population in a Department of Corrections facility whose visits are restricted to basic visiting shall be permitted visitation as follows:

(A) Immediate Family: Four visits per month, two of which must occur on weekdays.

(B) All other approved visitors: Two visits per month.

(C) Only two visitors shall be allowed. A third person shall be permitted if he/she is under three years of age and is held on the lap. Exceptions may be specifically authorized by the superintendent or designee.

(D) Visits shall be limited to no more than one hour in length.

(6) Inmates Assigned to Special Housing:

(a) Inmates assigned to special housing may be permitted basic visiting with immediate family members only in accordance with the criteria set forth in OAR 291-127-0250, except as otherwise specified in these rules.

(b) Visitation by inmates assigned to special housing shall be limited to one visit per week, except as otherwise specified in these rules.

(c) Duration of visits shall be established by the facility superintendent or designee, and shall be limited to no more than one hour in length, depending upon space availability, except as otherwise specified in this rule.

(d) Death Row: Inmates assigned to Death Row who are approved for visiting shall be permitted two visits per week with approved visitors on their visiting list. The maximum length of visits is limited to two hours, depending upon space availability. Visitors must call in advance to schedule a visiting appointment.

(e) Administrative Housing: Inmates assigned to Administrative Housing may be permitted visits with approved visitors on their visiting list. The facility superintendent or designee shall determine the duration of the visit based upon space availability. Visitors must call in advance to schedule a visiting appointment.

(f) Special Management Unit (SMU): Inmates assigned to a Special Management Unit at a Department of Corrections facility may be permitted visits with approved visitors on their visiting list in the unit or the main visiting room, subject to recommendation of a psychiatrist and with the approval of the facility superintendent/designee. The facility superintendent or designee shall direct the type of visiting permitted (privileged or basic), upon recommendation of the psychiatrist. No minor children will be permitted to visit with the inmate if the visit occurs in the unit. Visitors must call in advance to schedule a visiting appointment.

(g) Intensive Management Unit (IMU): Inmates assigned to an Intensive Management Unit (IMU) or IMU cell may be permitted visits based on the inmate's program level and in accordance with the Department of Corrections rule on **Intensive Management Unit** (OAR 291-155). Visits will be conducted in a designated basic visiting area for IMU status inmates. Visits will occur only with immediate family members. Visitors must call in advance to schedule a visiting appointment.

(h) Infirmary: Inmates assigned to the Infirmary at a Department of Corrections facility may be permitted visits as follows:

(A) Inmates who are permanently assigned to the Infirmary at a Department of Corrections facility may be permitted privileged visiting in the main visiting room/area with approved visitors on their visiting list, upon recommendation of Health Services staff. Visitation by inmates approved for privileged visiting in the main visiting room/area shall be subject to the 24 visiting point system set forth in OAR 291-127-0250.

(B) Inmates who are patients in the Infirmary, but are not permanently assigned to the Infirmary, and who are approved for privileged visiting may be permitted visits with immediate adult family members in the Infirmary, except as otherwise recommended by Health Services staff and authorized by the facility superintendent or designee.

(C) Inmates participating in a Department of Corrections Hospice program may be permitted extended visitation on a case-by-case basis, upon recommendation of Health Services staff and as authorized by facility superintendent or designee. Visitation in the Hospice program is not a part of the regular visitation program.

(i) Community Hospitalization: Inmates assigned to community hospitalization and under Department of Corrections supervision may be permitted visits as follows:

(A) Inmates assigned to general population and the Infirmary in a Department of Corrections facility prior to their current hospital admission may be permitted visiting during the course of their hospital stay, upon consent of the attending/treating physician and/or hospital administration. Visits shall be during normal hospital visiting hours. Duration of visits shall be determined by the superintendent/designee.

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(B) Inmates assigned to the Disciplinary Segregation Unit, Administrative Segregation Unit, Special Management Unit, and Death Row prior to their current hospital admission will only be permitted visits on a case-by-case basis, upon recommendation of Health Services staff, and as authorized by the facility superintendent 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 10-2000, f. & cert. ef. 4-25-00; DOC 3-2005, f. 3-11-05, cert. ef. 3-14-05; DOC 8-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

Rule Caption: Management of Inmate and Offender Records.

Adm. Order No.: DOC 9-2008

Filed with Sec. of State: 4-10-2008

Certified to be Effective: 4-10-08

Notice Publication Date: 1-1-2008

Rules Adopted: 291-070-0115, 291-070-0120, 291-070-0125, 291-070-0130, 291-070-0135, 291-070-0140

Rules Ren. & Amend: 291-070-0005 to 291-070-0100, 291-070-0010 to 291-070-0110

Rules Repealed: 291-070-0015, 291-070-0020, 291-070-0025, 291-070-0026, 291-070-0027, 291-070-0028, 291-070-0030, 291-070-0035, 291-070-0041, 291-070-0043, 291-070-0045, 291-070-0050, 291-070-0055, 291-070-0056, 291-070-0080

Subject: The rule modifications are necessary to update and clarify standards for the control, maintenance and disposition of inmate and offender records within the Department of Corrections.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-070-0100

Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to establish standards for the control, maintenance and disposition of file materials pertaining to individuals committed to the supervision of the Department of Corrections.

(3) Policy: It is the policy of the Oregon Department of Corrections that files on Department of Corrections inmates and offenders will be maintained in a manner which assures the availability of file material necessary for case management. Additionally, relevant file material which serves to preserve an historical record of the individual's period of supervision shall be maintained and retained for specified periods of time following the individual's release from supervision.

Stat Auth: ORS 179.040, 423.020, 423.030, 423.075

Stat Impl: ORS 179.040, 423.020, 423.030, 423.075

Hist.: CD 54-1981(Temp), f. & ef. 12-10-81; CD 17-1982, f. & ef. 6-4-82; CD 21-1983(Temp), f. & ef. 5-16-83; CD 38-1983, f. & ef. 10-14-83; CD 50-1985, f. & ef. 8-16-85; CD 8-1986, f. 4-18-86, ef. 5-15-86; CD 17-1986, f. & ef. 6-30-86; CD 23-1994, f. 12-21-94, cert. ef. 1-3-95; Renumbered from 291-070-0005, DOC 9-2008, f. & cert. ef. 4-10-08

291-070-0110

Definitions

(1) Archives: The state repository for public records having a legal or historical value but for which immediate access is not required. The location where the official files of Department of Correctional felony inmates and offenders are permanently maintained.

(2) Department of Corrections Facility: Any institution, facility, or staff office, including the grounds, operated by the Department of Corrections.

(3) Functional Unit: Any organizational component within the Department of Corrections responsible for the delivery of services or coordination of programs.

(4) Functional Unit Manager: Any person within the Department of Corrections who reports to the Director, Deputy Director, an Assistant Director, or administrator and has responsibility for the delivery of program services or coordination of program operations.

(5) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision, or probation status.

(6) Offender: Any person under the supervision of the Department of Corrections who is on parole, probation, or post-prison supervision status.

(7) Offender Information and Sentence Computation (OISC): The centralized functional unit which maintains working files after an inmate is released from a Department of Correctional facility.

(8) Record: Includes, but is not limited to, a document, book, paper, photograph, file, sound recording or machine readable electronic record,

regardless of physical form or characteristics, made, received, filed or recorded in pursuance of law or in connection with the transaction of public business, whether or not confidential or restricted in use. (ORS 192.005)

(9) Records Officer: Refers to the person designated by a state agency or political subdivision in accordance with ORS 192.105(2)(a). The OISC Administrator is the Department of Corrections Records Officer and has the duty to archive and seal offender records in compliance with these rules.

(10) Retention Schedule: Either a General Schedule published by the State Archivist in the Oregon Administrative Rules in which certain common public records are described or listed by title and a retention period is established for each, or a Special Schedule approved by the state Archivist for the public records of a specific agency.

(11) Sealing Inmate or Offender Records: The physical sealing of offender file material by order of the court accomplished by OISC.

(12) Working File: Those documents maintained in a Department of Corrections facility, Community Corrections office, or functional unit for administrative, operational or case management purposes.

Stat Auth: ORS 179.040, 423.020, 423.030, 423.075

Stat Impl: ORS 179.040, 423.020, 423.030, 423.075

Hist.: CD 54-1981(Temp), f. & ef. 12-10-81; CD 17-1982, f. & ef. 6-4-82; CD 21-1983(Temp), f. & ef. 5-16-83; CD 38-1983, f. & ef. 10-14-83; CD 50-1985, f. & ef. 8-16-85; CD 8-1986, f. 4-18-86, ef. 5-15-86; CD 17-1986, f. & ef. 6-30-86; CD 23-1994, f. 12-21-94, cert. ef. 1-3-95; CD 4-1996, f. 5-23-96, cert. ef. 6-1-96; Renumbered from 291-070-0010, DOC 9-2008, f. & cert. ef. 4-10-08

291-070-0115

Working File

(1) Establishment of Working File: Working files on all Department of Corrections inmates shall be established upon initial reception at a Department of Corrections facility or intake center.

(2) Working files shall remain decentralized to ensure the staff members who work with them have access to them.

Stat Auth: ORS 179.040, 423.020, 423.030, 423.075

Stat Impl: ORS 179.040, 423.020, 423.030, 423.075

Hist.: DOC 9-2008, f. & cert. ef. 4-10-08

291-070-0120

Access to Files

(1) Only employees of the Department of Corrections and representatives of criminal justice agencies shall have authorized access to inmate and offender files.

(2) The Records Office is a restricted area; only individuals authorized by the OISC Administrator or institution functional unit manager shall enter the Records Office:

(a) In emergency situations, the institution functional unit manager or designee may designate an employee to enter the Records Office and remove working files.

(b) A list of these authorized individuals may be posted in the Records Office.

Stat Auth: ORS 179.040, 423.020, 423.030, 423.075

Stat Impl: ORS 179.040, 423.020, 423.030, 423.075

Hist.: DOC 9-2008, f. & cert. ef. 4-10-08

291-070-0125

Transporting Working Files

(1) The Department will use proper security controls for transportation of inmate and offender working files during transit between institutions, functional units, agencies or customers.

(2) Each functional unit that sends, receives or transports confidential or sensitive offender information is responsible to assure that the information is protected appropriately during transit from loss, destruction or unauthorized access. (DAS Statewide Policy 107-004-100, Transporting Information Assets).

Stat Auth: ORS 179.040, 423.020, 423.030, 423.075

Stat Impl: ORS 179.040, 423.020, 423.030, 423.075

Hist.: DOC 9-2008, f. & cert. ef. 4-10-08

291-070-0130

Retention and Destruction of Offender Records

(1) The State Archivist grants authorization to Oregon government agencies, in the form of records retention schedules, for the retention or disposition of public records in their custody.

(2) Centralized control over retention and disposition of all records will be in accordance with state statutes.

(3) Agency working files will be maintained in accordance with the approved Special Schedule.

(4) At the time of closure of Community Corrections working files, the closing summary and other required documents will be sent to OISC for archiving in accordance with the SOON Office Procedures and Reference

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Guide. The Community Corrections working file will be maintained in accordance with individual county archival requirements and the Office Procedures and Reference Guide.

(5) Medical, dental, and mental health treatment files on inmates confined in a Department of Corrections facility will be maintained in accordance with the Department of Corrections rule on Health Services (Inmate) (OAR 291-124).

Stat Auth: ORS 179.040, 423.020, 423.030, 423.075
Stat Impl: ORS 179.040, 423.020, 423.030, 423.075
Hist.: DOC 9-2008, f. & cert. ef. 4-10-08

291-070-0135

Public Requests for Inmate/Offender Records

It is the responsibility of all persons using Department of Corrections files, including consultants, contract personnel, and volunteers, to ensure the confidentiality of and provide access to inmate and offender working files in strict accordance with the provisions outlined below:

(1) Inmate and Offender records will be released in accordance with the Department of Corrections rule on Release of Public Record (OAR 291-037).

(2) Verbal inquiries regarding Department of Corrections files and records from any source, including the inmate, will be responded to in accordance with the Department of Corrections rule on Release of Public Information (OAR 291-039).

Stat Auth: ORS 179.040, 423.020, 423.030, 423.075
Stat Impl: ORS 179.040, 423.020, 423.030, 423.075
Hist.: DOC 9-2008, f. & cert. ef. 4-10-08

291-070-0140

Sealing of Inmate or Offender Records

(1) Sealing of a working file or record may only be accomplished after receipt of a certified order from the court;

(2) Upon receipt of a certified order directing a working file or record be sealed, when the inmate's or offender's file is available, staff will attach any and all inmate and offender material to the court order and forward the court order and file material to OISC for sealing.

Stat Auth: ORS 179.040, 423.020, 423.030, 423.075
Stat Impl: ORS 179.040, 423.020, 423.030, 423.075
Hist.: DOC 9-2008, f. & cert. ef. 4-10-08

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Department of Energy
Chapter 330

Rule Caption: Amend business Energy Tax Credit (BETC) program rules.

Adm. Order No.: DOE 3-2008

Filed with Sec. of State: 3-21-2008

Certified to be Effective: 3-21-08

Notice Publication Date: 12-1-2007

Rules Amended: 330-090-0105, 330-090-0110, 330-090-0120, 330-090-0130, 330-090-0140, 330-090-0150

Subject: Establish rules defining "taxpayer" and "applicant" to be consistent with Oregon tax law.

Establish rules defining what constitutes a site for an eligible facility.

Establish rules for renewable energy resource facilities eligibility.

Make other changes as needed to effectively implement BETC program statutes.

Make editorial and housekeeping changes to OAR 330-090-0105 to OAR 330-090-0150, as needed.

Rules Coordinator: Michael W. Graine—(503) 378-5489

330-090-0105

What a BETC Is

A Business Energy Tax Credit for up to 35 percent of the eligible cost of qualifying facilities may be offset against owed Oregon income and corporation excise taxes. Qualifying renewable energy resource equipment manufacturing facilities, and renewable energy resource facilities including high efficiency combined heat and power facilities, completed on or after January 1, 2007 are eligible for a tax credit equal to 50 percent of eligible costs. Qualifying homebuilder installed renewable energy facilities completed on or after January 1, 2007 are eligible for a tax credit of up to \$9,000 and qualifying high performance homes completed on or after January 1, 2007 are eligible for a tax credit of up to \$12,000. An Oregon business or non-profit entity qualifying for the tax credit may transfer the

credit through the Pass-through Option in return for a cash payment. The Oregon Department of Energy (ODOE) must approve the credit before it can be claimed. The credit is an incentive for Oregonians to invest in qualifying facilities. Oregon Administrative Rules chapter 330, division 90 applies to all Business Energy Tax Credit applications for facilities eligible for a 35 percent tax credit received by ODOE on or after December 1, 2007. These rules also apply to applications for renewable energy resource equipment manufacturing facilities; qualifying renewable energy resource facilities, including high efficiency combined heat and power facilities; qualifying homebuilder installed renewable energy facilities and high performance homes facilities received by ODOE on or after January 1, 2007. These rules are effective April 1, 2008.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08

330-090-0110

Definitions

(1) "Alternative Fuel": A motor vehicle fuel, other than petroleum gasoline or diesel, certified by the U.S. Environmental Protection Agency for roadway use that results in equivalent or lower exhaust emissions or higher energy efficiency when used. Alternative fuels include electricity, biofuels, hydrogen, hythane, methane, methanol, natural gas, liquefied natural gas, liquefied petroleum gas (propane), renewable diesel and other fuels the Director allows. Blends of these alternative fuels with conventional fuels will only be considered an alternative fuel under these rules when the concentration of the alternative fuel is 20 percent of the entire volume of the blended fuel or greater. Hydrated fuels must have a water content of 10 percent of the entire volume of the blended fuel or greater to be considered eligible as an alternative fuel under these rules.

(2) "Alternative Fuel Fueling Station": A renewable energy resource facility necessary to refuel alternative fuel vehicle fleets. This will include the facilities for mixing, storing, compressing, charging, and dispensing alternative fuels, and any other necessary and reasonable equipment. It can be a facility for either public or private use.

(3) "Alternative Fuel Vehicle (AFV)": A vehicle designed to operate on an alternative fuel. This includes vehicles direct from the factory or vehicles modified to allow the use of alternative fuels. This does not include vehicles owned or leased by the State of Oregon acquired to comply with federal requirements for fleet acquisition of alternative fueled vehicles. This does not include vehicles leased by an investor-owned utility (IOU) to others.

(4) "Applicant": An applicant means:

(a) A person who applies for a preliminary certification of a Business Energy Tax Credit under this section includes:

(A) Individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

(B) Any cooperative, non-profit corporation, or federal, state or local governments including school districts, water districts, or any other special districts. These entities are qualified applicants when they have a pass-through partner, or commit to select such a partner prior to final certification.

(C) A contractor installing an alternative fueled vehicle fueling station in a dwelling.

(b) A person who applies for a final certification of a Business Energy Tax Credit under this section must be the facility owner.

(c) The tax credit certificate will be issued to a facility owner, but the tax credit may only be claimed pursuant to ORS 315.354.

(d) An applicant for preliminary certification or final certification or a tax credit recipient may not include any business or non-profit corporation or cooperative that restricts membership, sales or service on the basis of race, color, creed, religion, national origin, sexual preference or gender.

(5) "Biofuels": A motor vehicle or thermal combustion fuel other than petroleum gasoline or diesel which includes ethanol or is an ethanol blend at concentrations of 11 percent of the entire volume of the blended fuel or greater or biodiesel or is a biodiesel blend at concentrations of 20 percent of the entire volume of the blended fuel or greater, including:

(a) Biodiesel which is a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of American Standards and Testing Measurement (ASTM) D 6751 in effect on December 1, 2007 and is regis-

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tered with the US EPA as a fuel and a fuel additive under Section 211(b) of the Clean Air Act, and

(b) Biodiesel Blends is biodiesel fuel meeting the requirements of ASTM D 6751 in effect on December 1, 2007, blended with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend, and

(c) Ethanol (CH₃CH₂OH) is an alcohol fuel also known as ethyl alcohol, grain alcohol, and EtOH made from starch crops or from cellulosic biomass materials, such as grass, wood, crop residues, or used cellulose materials where component sugars are fermented into ethanol meeting the requirements of ASTM designation D 4806-01a; "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel" in effect on December 1, 2007; and

(d) Ethanol Blends which is ethanol fuel meeting the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel" in effect on December 1, 2007, blended with petroleum-based gasoline fuel, designated EXX, where XX represents the volume percentage of ethanol fuel in the blend, and

(e) "E85," a motor vehicle fuel that is a blend of agriculturally derived denatured ethanol and gasoline or natural gasoline that typically contains 85 percent ethanol by volume, but at a minimum must contain 75 percent ethanol by volume. For the purposes of this chapter, the energy content of E85 is considered to be eighty-two thousand BTUs per gallon. E85 produced for use as a motor fuel shall comply with ASTM specification D 5798-99 in effect on December 1, 2007.

(6) "Biomass": An organic matter such as agricultural crops and residue, wood and wood waste, animal waste, aquatic plants and organic components of municipal and industrial wastes comprised of uncontaminated carbohydrates and other cellulosic material, and organic by products from wood pulping and other biologically derived materials including organic fibers that are available on a renewable or naturally recurring basis.

(7) "Building Code": Applicable state and local building codes in effect the date ODOE receives the application for preliminary certification.

(8) "Building Automation Controls Facility": Energy facilities that control energy consuming equipment in a building are eligible when energy saving features exceed standard practice (defined in BETC Technical Requirements) and applicable code requirements. Eligible cost does not include costs associated with operations, maintenance, or repair as described in section 19(b)(D) of this rule.

(9) "Business Energy Tax Credits Technical Requirements (BETC Technical Requirements)": A manual produced by and available from ODOE describing specific technical requirements that must be met to comply with these rules, based on the version of the manual in effect the date the application for preliminary certification is received by ODOE.

(10) "Carpool Facility": A facility in which riders share the same vehicle to commute between different communities or neighborhoods on a regular basis.

(11) "Car Sharing Facility": A facility in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. It does not include operations conducted by a car rental agency.

(12) "Commercial New Construction Facility": An energy facility which includes a new structure or one of the following:

(a) An addition to an existing structure, which provides additional square footage;

(b) An alteration to an existing structure, which changes the functional use of the entire structure;

(c) An alteration to an existing structure occurring within six months of a change in the facility's ownership; or

(d) A major renovation to 50 percent or more of the square footage of an existing structure in which three or more building systems are changed. Systems include but are not limited to: envelope, space conditioning, lighting, water heating and process.

(13) "Commissioning": The process to assure that Heating Ventilating and Air Conditioning (HVAC) systems (and associated hydronic systems), lighting system controls and automatic temperature control systems have been completely and properly installed and put into service in accordance with their design intent as defined by the contract documents. The process of commissioning also includes the systematic testing, verification, documentation, training of operations personnel and preparation of operations and maintenance documentation.

(14) "Commercial Process": An energy facility that is an energy-using system (e.g., lighting, HVAC, or water heating). Such a system can be studied and judged on its own.

(15) "Commuter Parking Space" means a facility that is a parking space that is:

(a) Located in an area where parking spaces are regularly available for lease by the day or month to the public.

(b) Leased by the employer for an employee's use:

(i) Separate from the lease for the business premises.

(ii) As an integral part of the lease for the business premises if the employer has the right to sublease the parking space to a commuter.

(c) Owned by the employer.

(d) Not located in a lot used primarily for business customers.

(e) Not provided to an employee for parking a vehicle the employee regularly uses to perform the employee's job duties.

(16) "Completed Application": Contains all of the information detailed in OAR 330-090-0130(4). All questions on the application form must be answered. An incomplete application will be returned to the applicant for completion. Only completed applications will be considered on a first-come-first-served basis.

(17) "Completed Facility": A facility for which all costs have been paid or committed by a binding contract or agreement and that is installed and operating or which the Director decides the applicant has made all reasonable efforts to operate, including making changes suggested by ODOE.

(18) "Cooperative Agreement Organization": ODOE may enter into cooperative agreements with qualified public purpose, governmental, or other organizations to assist in the development and qualification of BETC applications, with the scope of the agreement defined by ODOE based on the qualifications of the organization and subject to conditions specified in the agreement.

(19) "Cost": The actual capital costs and expenses the Director finds are needed to acquire, erect, build, modify, or install a facility under these rules. Ancillary costs that otherwise would be incurred (such as replacing wiring to meet current building code) are not eligible. Costs financed with federal funds, subject to specific restrictions, terms and conditions, other than costs financed by grants excluded by ORS 315.356(1) that are not subject to specific restrictions, terms and conditions, may be eligible expenses, including but not limited to costs incurred by federal agencies directly for capital, operating, or other expenses.

(a) Cost can include payments for:

(A) Fees to finance, design or engineer the facility;

(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-090-0150(2), and shipping;

(C) All materials and supplies needed for the facility; and

(D) Work performed by employees of the applicant based on the following conditions:

(i) Employees must be certified, accredited, licensed, or otherwise qualified to do the work; and

(ii) Costs for employee's work on the energy facility must be detailed and documented as to specific tasks, hours worked, and compensation costs.

(E) Costs for legal counsel that is directly related to the development of a qualifying facility (non-litigation related); and

(F) Facilities or equipment required for vehicles to provide transportation services to serve riders (such as a wheelchair lift system).

(b) Cost may not include:

(A) Interest and warranty charges;

(B) Litigation-related legal fees and court costs;

(C) Patent searches, application and filing payments;

(D) Costs to maintain, operate, or repair a facility; or

(E) Administrative costs to apply for a tax credit for a facility including, but not limited to, the Business Energy Tax Credit review charge and the cost paid to secure a pass-through partner for the facility.

(F) Other costs the Director excludes.

(c) If a facility is built under a lease, lease-option or lease-purchase contract, the lessee's cost to acquire the facility is the value paid for the facility. If that amount is not known, the cost is the sum of:

(A) Tax credits passed through by the lessor to the lessee;

(B) The amount paid when the facility is transferred; and

(C) The lease payments not including taxes, insurance, interest, and operating costs.

(D) Payments to be made in the future must be discounted to present value.

(d) If a facility serves more than one purpose, cost includes only items needed to save energy and/or use renewable energy resources. This

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includes new or replacement equipment that costs more because of its energy saving features. ODOE may do inspections to verify eligible costs.

(e) Incremental cost is the cost above a reasonable minimum expected to construct a similar facility without energy efficient features.

(A) In commercial new construction, it is the difference between building to code and building to meet or exceed the standards for substantial energy savings.

(B) In other facilities, it is the difference between prevailing practices for that business or industry and a more energy efficient method.

(f) Eligible facility costs are limited by the following:

(A) Facilities must have a one to 15-year simple payback period unless specified below. If the simple payback period exceeds those limits, eligible costs will be prorated down to the highest amount that would result in a qualifying payback; and

(B) Facilities must have a simple payback of more than one year and less than the service life of the facility.

(C) Rental weatherization facilities are limited to a 30-year simple payback.

(D) Solar photovoltaic eligible facility costs will be limited on a dollar-per-watt basis as described in the BETC Technical Requirements. The Oregon Department of Energy will set maximum eligible cost for solar facilities periodically.

(i) The precertified eligible costs will be effective for 36 months for public facilities and 12 months for all other facilities from the date the facility is precertified, after which time the eligible costs will be recalculated based on the maximum eligible cost in effect at that time.

(E) For solar thermal systems, the maximum eligible cost shall be limited on a capacity basis as described in the BETC Technical Requirements. The Oregon Department of Energy will set maximum eligible cost for solar facilities periodically.

(i) The precertified eligible costs will be effective for 12 months from the date the facility is precertified, after which time the eligible costs will be recalculated based on the maximum eligible cost in effect at that time.

(F) Sustainable Building, recycling market development, high performance homes, homebuilder installed renewable energy facilities and transportation facilities are exempt from simple payback requirements.

(g) Costs for space conditioning or individual metering a facility(s) are limited to incremental costs, except when existing equipment is within its Service Life when costs will be the total eligible facility costs. Incremental costs are limited to 40 percent of the cost to install a replacement space or hot water heating system in rental dwellings, except as defined in (j) below.

(h) Costs for space and water heating equipment as defined in OAR 330-090-0110(20)(d) include the total cost of individually metered systems that replace a central system in a rental dwelling.

(i) Eligible costs for transportation facilities include, but are not limited to, telework, commuter pool vehicles, bicycles, Transportation Management Association fees, incentive programs, transit passes, car sharing, parking cash out, carpool/vanpool, individualized behavior change program, Research, Development and Demonstration (RD&D) rideshare matching service, transportation services and transportation services for K-12 students. Except for RD&D facilities, bicycle purchases, and commuter pool vehicles with special equipment, the maximum eligible cost for transportation facilities is the result of the cost-per-vehicle mile calculated by a formula adopted by the Oregon Department of Energy multiplied by the estimated vehicle miles reduced (VMR) by the facility.

(j) Costs for premium efficient appliances as defined in this rule are limited to incremental costs. When incremental cost values are not available the incremental cost will be deemed a portion of the facility cost based on similar facilities, but not exceeding 40 percent of the purchase cost.

(k) In implementing the utility pass-through in OAR 330-090-0140(2), utilities may set a minimum eligible cost to participate. The following requirements apply:

(A) The utility must submit exact specifications of the limit to and receive approval by ODOE prior to implementation of the limit.

(B) The utility must provide notification to the customer that there is no minimum when applying directly to ODOE, however, payments in OAR 330-090-0150(2) do apply.

(l) Sustainable Building Facilities are exempt from the previous requirements of this definition, as the eligible cost for these facilities is calculated using the table in the Business Energy Tax Credit Technical Requirements for Sustainable Building facilities OAR 330-090-0135.

(m) The sum of any rebates or cash payments under ORS 469.631 to 469.645, 469.649 to 469.659, 469.673 to 469.683, or 757.612(5)(a), or

from a public purpose organization and the business energy tax credit may not exceed eligible costs.

(20) "Cost-per-Vehicle Mile": The total cost of one vehicle mile driven by a single occupant. The components of calculating the total cost include, but are not limited to, vehicle operation cost, fuel cost, travel time, congestion and pollution. The calculation formula for the total costs is available on the Web site of the Oregon Department of Energy.

(21) "Director": The Director of the Oregon Department of Energy or designees.

(22) "Energy Department": The Department of Energy of the State of Oregon (ODOE).

(23) Energy Facility": means any capital investment for which the first year energy savings yields a simple payback period of greater than one year. An energy facility includes:

(a) Any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business and actually used in the processing or utilization of renewable energy resources to:

(A) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

(B) Provide the initial use of energy where electricity, petroleum or natural gas would have been used;

(C) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for sale by or use in the trade or business;

(D) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005; or

(E) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol, methanol, gasohol or biodiesel.

(b) Any acquisition of, addition to, reconstruction of or improvement of land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business in order to substantially reduce the consumption of purchased energy.

(c) A necessary feature of a new commercial building or multiple unit dwelling, as dwelling is defined by ORS 469.160, that causes that building or dwelling to exceed an energy performance standard in the state building code.

(d) The replacement of an electric motor with another electric motor that substantially reduces the consumption of electricity.

(24) "Facility": means an energy facility, recycling facility, rental weatherization facility, transportation facility, car sharing facility, sustainable building practices facility, alternative fuel vehicle or facilities necessary to operate alternative fuel vehicles, including but not limited to an alternative fuel vehicle refueling station, a high-efficiency combined heat and power facility, a high-performance home, a homebuilder-installed renewable energy system, a renewable energy resource equipment manufacturing facility or Research, Development & Demonstration facility that complies with these rules and any applicable BETC Technical Requirements. It must be located within the geographical confines of Oregon. The dollar value of the first year energy savings must be less than the cost of such facility, except as allowed for a Research Development & Demonstration facility, transportation or recycling market development or recycling facility.

(a) An energy conservation measure (ECM), is a facility if it results in substantial savings in the amount of purchased energy used at a site by a business or other eligible entity. Energy conservation measures include equipment installed for the purpose of reducing energy use.

(b) Costs for a facility needed to obtain substantial energy savings for a new commercial, institutional, or industrial building. Savings will be compared to energy used by a building, unit, or industrial process that does not have the proposed conservation. But, such buildings must comply with the Building Code and have the same use, size, space heat fuel, and orientation as the applicant's building, unit, or industrial process.

(c) A space conditioning system(s) is a facility if it provides substantial energy savings and complies with the BETC Technical Requirements, including reporting whether any replaced mercury-switch thermostats will be or have been recycled and, if so, how. Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source. An incremental upgrade, as defined in OAR 330-090-0110(19)(e), of a fuel switching facility will be allowed if the upgrade complies with these rules.

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(d) A new electric motor that complies with the BETC Technical Requirements.

(e) For buildings to be owned, leased, or otherwise operated and maintained by the state, including the State System of Higher Education, to qualify for the credit it must comply with the requirements of the State Energy-Efficient Design Program (SEED) as defined in OAR Chapter 330, Division 130 and associated guidelines, in addition to meeting requirements of these rules.

(f) An energy facility does not include:

(A) Swimming pools and hot tubs used to store heat.

(B) Wood stoves.

(C) Space conditioning systems and back-up heating systems, including systems that do not meet code or minimum standards listed in the BETC Technical Requirements.

(D) Devices and substances whose use is common in the applicant's business, except hog fuel boilers that replace fossil fuel boilers.

(E) Pollution control facilities and alternate energy devices for which a tax credit or ad valorem tax relief is granted under ORS 307.405, 316.097 or 316.116.

(F) Devices or materials which are standard practice.

(G) Recycling automotive air conditioning chlorofluorocarbons (CFC).

(H) Conservation in rental dwellings, for applicants listed in ORS 469.205(1)(c)(A) and

(B), which were issued an occupancy permit on or after January 1, 1996.

(I) Other items the Director finds are not allowed under ORS 469.185 to 469.225, 317.104, and 316.140 to 316.142.

(25) "Facility Eligible Square Footage": For the purpose of calculating the tax credit amount for a Sustainable Building Facility, facility eligible square footage includes all temperature-conditioned floor areas, and the ground-level footprint area of parking structures or parking structure elements of the facility. It does not include exterior square footage beneath overhangs, awnings, canopies; walkways or unconditioned plaza areas beneath conditioned portions of the building.

(26) "Facility Operator": The person or people to whom the applicant gives authority to manage a facility. Such person or people will be the applicant's agent for all reasons related to the facility once its development begins.

(27) "Facility Owner": An applicant who purchases and owns a qualified facility.

(28) "Facility Start": The date the applicant chooses to write on the preliminary certificate application that meets one of the following criteria:

(a) A non-refundable deposit is placed on the facility equipment;

(b) A purchase order is placed for the equipment;

(c) A contract is executed for the design of the facility;

(d) A document is executed that obligates the applicant to proceed with a facility; or

(e) The date facility information for a preliminary certification application is received by a cooperative agreement organization.

(29) "Final Certification": Final certificate issued after completion of an approved BETC facility.

(30) "Geothermal Energy": Natural heat in any form below the earth's surface. It also means minerals in solution, or other products of naturally heated substances below the earth's surface. It includes:

(a) Products of geothermal processes, such as steam, hot water, and hot brines; or

(b) Steam and gases, hot water and brine caused by injecting substances into the earth; or

(c) Heat or other related energy in the earth; or

(d) By-products of (a) through (c).

(31) "Ground Source Heat Pump": means a heating, ventilating and air-conditioning system, also known as a ground water heat pump, earth-coupled heat pump, geothermal heat pump or ground loop alternative energy device, that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth. A ground source heat pump is eligible for a 35 percent Business Energy Tax Credit.

(32) "High Efficiency Combined Heat and Power": A renewable energy resource facility designed to generate electrical power and thermal energy from a single fuel source with a fuel-chargeable-to-heat rate yielding annual average energy savings of 20 percent. The fuel-chargeable-to-heat rate would need to be 5,440 Btu/kWh. (See BETC Technical Requirements for formula and other specifications.) This renewable energy resource facility would be eligible for a 50 percent Business Energy Tax Credit. Facilities that do not meet this requirement may be eligible for a 35 percent tax cred-

it under Combined Heat and Power facilities or may qualify in part for a tax credit relating to the heat recovery portion of the facility.

(33) "High Performance Home:" is an energy facility that is a new dwelling unit constructed by a licensed builder under the Oregon Residential Specialty Code which has its own space conditioning and water heating systems, complies with the specifications listed in the BETC Technical Requirements and is intended for sale to an end-use homebuyer. A High Performance Home must include a Homebuilder Installed Renewable Energy System that produces at least 1 kWh per square foot of conditioned space on an annual basis for photovoltaics or the equivalent for other technologies as listed in the BETC Technical Requirements. Homebuyer may not apply for a Residential Energy Tax Credit for qualifying High Performance Home features qualifying for the Business Energy Tax Credit.

(34) "Homebuilder Installed Renewable Energy Facility:" is a renewable energy resource facility in a single family dwelling that meets specified technical requirements as listed in the BETC Technical Requirements. The renewable energy resource facility must be approved by a technician certified by the Oregon Department of Energy. Renewable energy resource facilities must be connected to the home's main service panel and the installers must provide a two-year warranty covering all parts and labor. Homebuyer may not apply for a Residential Energy Tax Credit for qualifying Homebuilder Installed Renewable Energy Facility features qualifying for the Business Energy Tax Credit. Renewable energy resource facilities may include:

(a) Photovoltaic — The credit amount is based on \$3 per watt of installed capacity.

(b) Solar Domestic Water Heating — The credit amount is equal to \$0.60 per kWh saved as determined by the ODOE solar domestic water heating yield table.

(c) Active Solar Space Heating — The credit amount is equal to \$0.60 per kWh saved based on a calculation procedure approved by ODOE staff.

(d) Passive Solar — The credit amount is equal to \$600 per home plus \$0.60 per square foot of heated floor space.

(e) Other — Other renewable energy resource facilities (e.g. wind turbines, fuel cells) will be evaluated on a case-by-case basis and the credit amount will be equal to \$2.00 per kWh saved.

(35) "Hybrid Electric Vehicle": An energy facility that is a vehicle which draws propulsion energy from onboard sources of stored energy which include both an internal combustion engine and a rechargeable energy storage system. The charging system for the energy storage system must have an operating voltage of 100 Volts or higher. In addition to a hybrid drive train, a Hybrid Electric Vehicle (HEV) must also have a regenerative braking system. A list of vehicles known to meet these qualifications will be listed in the BETC Technical Requirements.

(36) "Individualized Travel Behavior Change Program": A facility that is a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with participants in a specific geographical area or in a targeted group.

(37) "Industrial Process Energy Facility": An energy facility that provides a direct improvement to a manufacturing process in a facility conducting activities categorized in two-digit 1987 Standard Industrial Classification (SIC) codes 01 through 49 or the corollary 2002 North American Industry Classification System (NAICS) codes including 11 through 31 and 48-49 regardless of ownership, and:

(a) An energy facility that provides substantial energy savings from conservation; or

(b) A renewable energy resource facility that provides substantial energy savings through the use of renewable resources; or

(c) A renewable energy resource facility that provides substantial energy savings by recovering waste heat from cogeneration systems; or

(d) A renewable energy resource facility that prepares or conditions alternative fuels for distribution or dispensing; or

(e) An energy facility that increases industrial process efficiency through recycling market development; or

(f) An energy facility that provides emergency replacement inventory of electric motors as defined in (20)(e) of this rule; but

(g) Does not include space conditioning for human comfort or general illumination.

(38) "Lease Contract": A contract between a lessor and a lessee of a facility.

(a) In a lease-purchase contract the lessee owns the facility at the end of the lease and is eligible for the BETC.

(b) In a lease or lease-option contract the lessor owns the facility through the life of the contract and is eligible for the BETC.

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(39) "Least Cost Plan": A least cost plan filed by an Investor Owned Utility (IOU) as defined in ORS 757.005 and acknowledged by the Oregon Public Utility Commission (OPUC) under Order Number 89-507.

(40) "Lighting Facility": Means an energy facility that will reduce the affected lighting energy use by at least 25 percent and complies with BETC Technical Requirements, including reporting for non-residential structures whether any lamps replaced in the facility or that will be subsequently replaced will be recycled and, if so, how.

(41) "Low Interest Loan":

(a) For an electric utility, a loan with interest that is not more than 6.5 percent per year for those measures identified as cost effective in the utility audit. All other measures identified in the utility audit will be financed by a rate established by the OPUC. The combined interest rate will not exceed 12 percent.

(b) For all utilities, the loan principal or interest rate will be reduced by the present value of the tax credit earned under these rules. If the principal or interest is reduced to zero by applying the present value of the credit without allotting all that value, the excess will accrue to the owner who receives the loan. The loan will be repaid in a reasonable time not more than 10 years after it is issued.

(c) Some utilities may offer cash payment incentives as an option to a loan. The present value of the tax credit may be added to this incentive as provided in OAR 330-090-0140(2) of this rule.

(42) "Mass Transit District": A mass transit district included in ORS 184.675(7).

(43) "Metropolitan Service District": A metropolitan service district included in ORS 184.675(7).

(44) "Necessary Feature": A feature for which its primary purpose is:

(a) Complying with the Building Code, including remodeling or new construction that includes facilities to comply with the Building Code;

(b) Complying with specific state or federal statutes or requirements for pollution control or recycling facility equipment. Recycling facilities are necessary features except as noted in OAR 330-090-0110(47); or

(c) Routine maintenance or repair, such as replacing water damaged insulation or a broken window.

(45) "Net Present Value": A cash payment equivalent to the net present value of the BETC as determined under OAR 330-090-0140(1)(b). Also referred to as the "pass-through rate."

(46) "Organization": A corporation, association, firm, partnership, limited liability company, joint stock company, cooperative, non-profit corporation, or federal, state or local government including school district, water district, or any other special district.

(47) "Parking Cash Out" means a facility that offers cash allowance or a transit pass to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle.

(48) "Pass-through Option": An option that allows a facility owner to transfer the facility's tax credit eligibility to persons or businesses in return for a cash payment equivalent to the net present value.

(49) "Pass-through Partner": A person or business or persons or businesses accepting a tax credit certificate in return for a cash payment equivalent to the net present value of the BETC.

(50) "Preliminary Certification": Preliminary certificate issued upon successful completion of the first stage in obtaining a BETC.

(51) "Premium Efficient Appliance": An energy facility that is an appliance that has been certified by ODOE to have premium energy efficiency characteristics. Residential appliances are listed in ODOE's Alternative Energy Devices Systems Directory. Commercial appliances are listed in ODOE's Premium Efficient Commercial Appliances Directory.

(52) "Public Purpose Organization": The entity administering the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B) or its agents.

(53) "Qualified Transit Pass Contract": A purchase agreement entered into between a transportation provider and an organization, the terms of which obligate the organization to purchase transit passes on behalf or for the benefit of riders over a specified period of time.

(54) "Recycling": A process to change a waste stream into a useable product or material. It does not include re-use in the same way the product or material first was used unless it changes the product or material. It does not include the combustion or incineration of a waste stream or components thereof, although these processes may be a part of an "Energy Facility" or "Waste to Energy Facility" where they include characteristics required to meet those definitions.

(55) "Recycling Facility": means an energy facility with equipment used in a business for recycling in communities not subject to OAR 340-090-0030 (2), or equipment used in recycling non-principal recyclable

materials for specific wastesheds, as noted in OAR 330-090-0110(18)(h). It does not include any facilities which are standard practice or for the purchase and installation of equipment that is specifically required by state or federal statute or rule. It includes:

(a) Newly purchased vehicles with integrated recycling material sortation/collection features or changes to vehicles with integrated recycling material sortation/collection features used to transport recyclable products that cannot be used further as is. This includes but is not limited to trailers, racks, or bins that attach to such vehicles.

(b) Equipment used to process recyclable products. This includes but is not limited to balers, flatteners, crushers, separators, drop boxes, and scales.

(56) "Recycling Market Development Facility": Facilities that stimulate demand for recycled materials. It includes facilities that meet one of the following criteria:

(a) The facility uses recycled materials as feedstock to produce new products; or

(b) Equipment that allows reuse of pre or post consumer waste in the production of new products; or

(c) Recycled material equipment which yields a feedstock with new and changed characteristics for the production of new products; or

(d) Equipment that enables a higher amount of recycled material feedstock to be used in the manufacture of a product.

(57) "Renewable Diesel": A diesel fuel derived from biomass as defined in United States Energy Policy Act 2005 Section 45K (C)(3), using the process of thermal depolymerization that meets the following:

(a) Registration requirements for fuels and chemicals established by the EPA under Section 211 of the Clean Air Act (42 U.S.C. 7454) in effect on December 1, 2007; and

(b) Requirements of the ASTM D975 or D396 in effect on December 1, 2007, and

(c) Has a producer's Certificate of Analysis which certifies that the lot, batch or produced volume for sale has an organic content concentration of greater than 50 percent of the entire volume of the resultant fuel and the organic feedstock material is described.

(58) "Renewable Energy Resource" includes, but is not limited to:

(a) Straw, forest slash, wood waste or other wastes from farm or forest land, nonpetroleum plant or animal based biomass, solar energy, wind power, water power or geothermal energy; or

(b) A hydroelectric generating facility that obtains all applicable permits and complies with all state and federal statutory requirements for the protection of fish and wildlife and:

(A) That does not exceed 10 megawatts of installed capacity; or

(B) Qualifies as a research, development or demonstration facility.

(59) "Renewable Energy Resource Facility:" means an energy facility used in the processing or utilization of renewable energy resources to:

(a) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

(b) Provide the initial use of energy where electricity, petroleum or natural gas would have been used;

(c) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for sale by or use in the trade or business;

(d) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005; or

(e) Manufacture or distribute alternative fuels, including but not limited to electricity, ethanol, methanol, gasohol or biodiesel.

(60) "Renewable Energy Resource Equipment Manufacturing Facility": means a facility as defined in ORS 469.185 (13) and subject to standards adopted by the Oregon Department of Energy pursuant to ORS 469.197(4).

(61) "Research, Development, and Demonstration Facility (RD&D)": A facility that complies with (a) through (e):

(a) A facility that is not standard practice, is likely to produce or produces products or technologies that are likely to qualify as a facility in Oregon when commercialized, and complies with one or more of the following criteria:

(A) Research facilities that include a test bench research, prototype or pilot scale construction of a theoretically proved or primary researched technology;

(B) Development facilities that include the new manufacture or initiation of the capability to produce or deliver facilities in Oregon, excluding development facilities that increase established manufacturing or production capacity in Oregon;

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(C) Demonstration facilities that are likely to resolve questions on how to apply new technology or that inform the public about new or improved technology through pilot or production scale applications of technology;

(D) Innovative travel reduction facilities that reduce vehicle miles traveled. The applicant must conduct pre and post surveys that measure travel reductions and submit the results with the application for final certification. A transportation district, mass transit district, or metropolitan service district within a community of 50,000 or more people may not qualify for more than \$2 million annually in eligible costs for innovative travel reduction programs.

(E) Facilities that improve energy efficiency in a focused geographic area through the replacement of outmoded energy equipment with energy-efficient equipment.

(F) Facilities in the Director's determination are likely to achieve Energy Office goals.

(b) A facility that demonstrates a reasonable potential to result in energy or conservation benefits in Oregon for which the value is likely to exceed the value of the tax credit, based on information filed with the application for preliminary certification.

(c) A qualifying RD&D facility that exclusively supports renewable energy resource use will be eligible for a 50 percent Business Energy Tax Credit; all other qualifying RD&D facilities will be eligible for a 35 percent tax credit.

(d) Eligible costs for a Research, Development or Demonstration facility also include costs inherent in a research, development and demonstration facility which may not result directly in saved or produced energy. Such costs may include facility design, monitoring, assessment, evaluation and reporting, including development of standards, specifications, policies and procedures facilitating technology transfer and instruments, controls, and other equipment needed to monitor, assess or evaluate the facility and the impacts of the facility.

(e) Eligible costs for a Research, Development or Demonstration facility are not subject to OAR 330-090-0110(19)(f),

(62) "Riders": Employees, students, clients, customers, or other individuals using transportation facilities or transportation facilities for travel.

(63) "Rideshare Matching Services Program": A facility that is a program that provides matching services to registered members to find shared rides for commuting on a regular basis.

(64) "Service Life": Equipment service life is as established in the most recent edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook as of the date the application for preliminary certification is received by ODOE or as determined by the Director for equipment not rated by ASHRAE. If the baseline facility has exceeded its service life, only an incremental facility will be considered eligible for a tax credit.

(65) "Simple Payback": The total eligible cost of a facility divided by the expected yearly energy cost savings, stated in years.

(66) "Standard Practice": Conventional equipment or material applied in a way that it may be observed as a common or necessary feature of new and existing businesses.

(a) In new commercial construction it may include but is not limited to: electronic fluorescent ballasts; T-8 fluorescent lamps, compact fluorescent lamps that are not hard wired; parabolic louvered fluorescent fixtures; R-19 insulated walls in wood frame construction; variable air volume space conditioning systems; the portion of energy management controls that monitor for life safety, maintenance, or control process for purposes other than saving energy.

(b) In other energy facilities it may include but not be limited to propane powered lift trucks, electric golf carts or curbside recycling bins.

(c) Any other equipment, material, or applications of equipment or material as determined by the Director.

(67) "Substantial Energy Savings": Means that ODOE has determined that:

(a) A facility, other than a lighting retrofit or sustainable building facility and excluding Research Development & Demonstration, transportation, recycling market development, recycling facility, will save at least 10 percent of the energy used in a given facility;

(b) A lighting retrofit facility will reduce the affected lighting system energy use by at least 25 percent;

(c) The energy facility is a sustainable building facility as defined under "Sustainable Building" of this rule; or

(d) The facility measures are defined in the BETC Technical Requirements as measures that would qualify under or are measures rec-

ommended in an energy audit completed under ORS 469.631 to 469.645, 469.649 to 469.659, and 469.673 to 469.683.

(68) "Sustainable Building Facility": Means a building facility as defined under "Commercial New Construction" of this rule and that:

(a) Is rated and certified LEED-NC, LEED-CS, or LEED-CI under the Leadership in Energy & Environmental Design (LEED™) Green Building Rating System managed by the U.S. Green Building Council or

(b) Is rated and certified by a program approved by the Department that provides comparable performance on environmental measures and equivalent or better energy performance as documented by whole building energy modeling, is commissioned and is verified by an independent third party.

(c) For a Sustainable Building Facility to be eligible for a tax credit it must also comply with the requirements set forth in OAR 330-090-0135 and any applicable BETC Technical Requirements.

(69) "Transportation District": A transportation district included in ORS 184.675(7).

(70) "Transportation Facility": A facility that reduces energy used for traveling, including but not limited to traveling to and from work or school, work-related travel or travel to obtain medical or other services. A transportation facility must meet one or more of the following criteria:

(a) Telework including as working from home or from an office near home instead of commuting a longer distance to the principal place of employment. It does not include home-based businesses or extension of the workday. Telework equipment must be installed to reduce employee vehicle miles traveled a minimum of 45 working days per 12 consecutive months. Eligible costs include purchase and installation of new or used equipment at the telework site. Computer, facsimile device, modem, phone, printer, software, copier, and other equipment necessary to facilitate telework as determined by the Director are eligible costs. Eligible cost for telework facilities does not include replacement cost for equipment at the principal place of business when that equipment is relocated to the telework site; fees for maintenance and operation of any equipment; office furniture and office supplies or training costs.

(b) Telework for the purpose of reducing business vehicle miles traveled must reduce employee business related travel by 25 percent.

(c) Commuter pool vehicles transporting three or more riders dedicated to reducing vehicle miles traveled. The vehicle must be used a minimum of 150 working days per 12 consecutive months. Eligible cost includes purchase of vehicle(s). If vehicles with special equipment are being purchased, a copy of the sales quotation showing the additional cost for the equipment must be submitted. The vehicle must remain in service for five years. Where vehicles are used for business travel other than transporting riders, eligible cost shall be reduced based on the estimated percent of miles dedicated to reducing travel. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible.

(d) Transit passes used by an applicant's riders or in fareless zones to reduce vehicle miles traveled. Eligible cost includes the cost of the transit pass or the cost specified in the contract for providing the fareless zone. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible. Eligible cost also includes the cost of equipment used as a shelter for riders waiting for transit. To be eligible, the shelter must be part of a transit pass facility.

(e) Bicycle used by an applicant's riders to reduce vehicle miles traveled a minimum of 45 work days per 12 consecutive months. Eligible costs include purchase of bicycles and equipment used to store bicycles. Accessory items such as locks, panniers, rain gear helmets, etc. are not eligible, except for bicycle lights.

(f) Fees paid by an applicant to a Transportation Management Association (TMA) or non-profit organization that provides transportation services for the purpose of reducing vehicle miles traveled by a passenger. The fee must be part of a transportation facility and cannot exceed the cost of the transportation facility. To be eligible, the applicant must provide verification of an agreement with the transportation provider for specific services that reduce vehicle miles traveled.

(g) The cost of an incentive program paid by the applicant that provides a financial incentive to a passenger for reducing vehicle miles a minimum of 45 work days per 12 consecutive months. To be eligible the applicant must provide a written incentive program plan for Energy Department approval.

(h) Car sharing is defined as a program in which drivers pay to become members in order to have joint access to a fleet of cars. Eligible cost for car sharing includes the cost of operating a car sharing program,

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including the fair market value of parking spaces used to store the cars available for the car sharing program, but does not include the cost of the fleet of cars. It does not include operations conducted by a car rental agency.

(i) Parking cash out is defined as a cash allowance or a transit pass given to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle. Eligible cost for parking cash out includes the cost of providing a commuter parking space. The employer may establish the value of the commuter parking space in either of the following ways:

(A) When the employer leases the commuter parking space for market value, separate from the lease for the business premises, the employer may establish the value by documenting the cost of leasing the commuter parking space.

(B) When the employer owns the commuter parking space or leases it as an integral part of the lease for the business premises, the employer may establish the value by documenting the cost of leasing a similar parking space within 250 yards of the employer's business premises.

(j) Transportation Service is defined as a facility that provides transportation services to reduce vehicle miles driven by a single occupant vehicle. The eligible cost for a transportation service facility is the cost for providing the transportation service, but does not include the cost of the vehicle. The transportation service facility must provide service for a minimum of 150 days per 12 consecutive months. Transportation districts, mass transit districts, and metropolitan service districts in communities with 50,000 or more people are not eligible.

(k) Individualized Travel Behavior Change is defined as a facility that is a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with the participants in a specific geographical area or in a targeted group. Pre and post-facility surveys must be conducted. The applicant must submit a report with the results of these surveys to measure travel reduction. Eligible costs include capital expenditures, administrative and communication costs. Facilities are subject to the VMR cost-effectiveness formula.

(l) Rideshare Matching Service is defined as a facility that is a program that provides matching services to registered members to find shared rides for commuting on a regular basis. Pre and post-facility surveys must be conducted. The applicant must submit a report with the results of these surveys to measure travel reduction. Eligible costs include capital expenditures, administrative and communication costs. Facilities are subject to the VMR cost-effectiveness formula.

(m) Carpool/Vanpool Program is defined as a facility that is an employer-sponsored or organization-sponsored program that provides transportation to registered members to commute on a regular basis. Eligible costs include vehicle operation costs, but does not include the cost of the vehicle. The applicant must conduct pre and post-facility surveys and submit a report with the results of these surveys to measure reduction in vehicle miles. The program must provide service for a minimum of 150 work days per 12 consecutive months. Facilities are subject to the VMR cost-effectiveness formula.

(n) Transportation Services for K-12 Students is defined as a facility that is a program that provides transportation services for K-12 students during the school year. All entities, including transportation districts, mass transit districts, or metropolitan service districts within communities of greater than 50,000 people, are eligible. (A) The tax credit amount shall be based on the cost per student and a reasonable estimate of the actual number of students served

(B) Eligible agencies shall develop a monthly cost per student service, based on but not limited to lost revenues, added costs, and VMR cost-effectiveness to be approved by the Department.

(C) The applicant must conduct pre and post-facility surveys and submit a report with the results of these surveys to measure reduction in vehicle miles.

(71) "Transportation Provider": means a public, private, or non-profit entity that provides transportation services to members of the public.

(72) "Transportation Services Contract": A written contract or agreement that is related to a transportation facility.

(73) "Utility": Gas or electric utilities as defined below.

(a) An Investor Owned Utility (IOU) as defined in ORS 757.005, or its subsidiaries and affiliated interests as defined in ORS 757.015; or

(b) A Publicly Owned Utility (POU) and people's utility district as defined in ORS 261.010, or a municipal or cooperative utility.

(74) "Vanpool Program": A is defined as a facility that is a program that provides opportunities for a designated group of riders to share the

usage of a vehicle to commute between different communities/neighborhoods on a regular basis.

(75) "Vehicle Miles Reduced (VMR)": Reduction in miles achieved by a facility when compared to single occupant vehicles.

(76) "Waste-to-Energy Facility": means an energy resource facility that recovers materials and energy from a waste stream under conditions listed below. The BETC program intends to encourage the responsible use of all resources including waste streams. Generally, recovery of a material will be preferred in comparison to recovery of energy. In order to respect the embedded energy of a material stream the following criteria have been established to define facilities that do not meet the definition of a recycling facility, but provide environmentally responsible recovery from a waste stream. Therefore, equipment used to recover materials and energy from a waste stream is an eligible facility when all of the following conditions are met:

(a) The value of the marketable materials and energy resources recovered from the waste stream, less the value of the external energy resources consumed in the recovery process is greater than the magnitude of the costs incurred or revenues derived in disposal of the waste stream in standard industry practice.

(b) Recovered material/end product, exclusive of fuel or lubricant, exceeds 50 percent or higher on a dry mass basis.

(c) The facility does not increase the release of toxins, fossil-derived greenhouse gas emissions, or other emissions.

(d) The facility does not divert materials from a higher value use.

(e) The facility has an acceptable energy balance as determined by the Director.

(77) "Year": Calendar year.

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 2-1988, f. & cert. ef. 3-17-88; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2006, f. 11-27-06, cert. ef. 12-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08

330-090-0120

What Qualifies for a BETC

Both the party asking for a BETC and a facility must comply with these standards.

(1) Standards for an Applicant — An applicant must:

(a) Be an applicant as defined by these rules; and

(b) Own or contract to buy a facility; or

(c) Own or contract to buy or lease an Oregon firm that will use or lease the facility or sell power from the facility.

(2) Standards for a Facility — A facility must:

(a) Be a facility as defined by these rules; and

(b) Comply with or have a variance from the land use laws of the city or county where the facility will be located; and

(c) Comply with all other local, federal, and state laws, including but not limited to the following:

(A) A water power energy facility that uses navigable waters or that sells electricity must have a permit, license or exemption from the Oregon Department of Water Resources (DWR) and the Federal Energy Regulatory Commission (FERC). Also, if the facility uses water from the Columbia River basin, it must comply with the Northwest Power Planning Council's Fish and Wildlife Program.

(B) A geothermal energy facility must have the proper permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) or a permit from DWR.

(C) A biomass energy facility must have required permits from the Oregon Department of Environmental Quality (DEQ).

(d) Include only costs allowed by these rules.

(3) Standards for Leased facilities: A BETC may be granted to the owner of a facility which leases the facility for use in connection with a private or public sector building or activity. The lessee may operate the facility in conjunction with its own building or activity, or the building or activity of another as part of an energy service contract or other contractual agreement.

(4) Standards for Distinct Facility Characteristics: A facility must have distinct essential characteristics to be considered a facility separate from another facility subject to the facility cost limitation imposed OAR

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330-090-0150(1)(a). Facilities that are not clearly distinguishable will be considered as one facility subject to the facility cost limitation.

(a) If an applicant is applying for a preliminary certification for a facility qualifying under the same specific facility definition under OAR 330-090-0110 as any other facility for which the applicant has received preliminary or final certification, the applicant must demonstrate that the facility has distinct essential characteristics or the facilities will be considered as one facility subject to the facility cost limitation imposed OAR 330-090-0150(1)(a), except as otherwise provided in OAR 330-090-0120(4)(B) and (4)(b). In its application, the applicant must specifically address each of the essential characteristics cited for the facility and clearly state the basis on which it believes the facilities have distinct essential characteristics. The applicant may also cite any other essential characteristics it believes are applicable and clearly state the basis on which it believes the facilities have distinct essential characteristics.

(A) Except as provided in subsection (B) of this section, questions to be considered in determining essential characteristics of a renewable energy resource facility include but are not limited to:

(i) What is the purpose or end-use application of the facilities and how are those purposes or end-use applications distinct?

(ii) What are the applicable permits, licenses or site certificates and how are they distinct?

(iii) Where and how closely are the facilities located, including supporting facilities such as access roads, substations, water or discharge lines, perimeter fencing, storage or parking areas, and how are the facilities distinct?

(iv) How, when, and from whom was the generating equipment procured for the facility and how is the procurement distinct?

(v) What are the net metering or power purchase agreements and how are those agreements distinct?

(vi) Where and how will the facilities connect to the grid and how will that connection be distinct?

(vii) What will be the applicable transmission agreements and how will those agreements be distinct?

(viii) What will be the construction agreements or arrangements and how are those agreements or arrangements distinct construction agreements?

(ix) What will be the operation, including dispatch if applicable, and maintenance agreements or arrangements and how are those agreements or arrangements distinct?

(x) What will be the financing arrangements and how are the financing arrangements distinct?

(B) For renewable energy facilities that qualify as small power production facilities under Oregon Public Utility Commission docket number UM1129 definition of separate site, each small power production facility may qualify for a Business Energy Tax Credit with the following provisions:

(i) Each applicant will only be allowed to take the applicant's proportion of any shared interconnection infrastructure.

(ii) Each applicant must identify other entities that share the applicant's interconnection infrastructure.

(C) Questions to be considered in determining the essential characteristics of all other facilities include but are not limited to:

(i) What is the purpose or end-use application of the facilities and how are those purposes or end-use applications distinct?

(ii) What are the applicable permits, licenses or site certificates and how are they distinct?

(iii) Where and how closely are the facilities located, including supporting facilities such as access roads, substations, water or discharge lines, perimeter fencing, storage or parking areas, and how are the facilities distinct?

(iv) How, when and from whom was the generating equipment procured for the facility and how is the procurement distinct?

(v) What will be the construction agreements or arrangements and how are those agreements or arrangements distinct construction agreements?

(vi) What will be the operation and maintenance agreements or arrangements and how are those agreements or arrangements distinct?

(vii) What will be the financing arrangements and how are the financing arrangements distinct?

(b) If facilities will be completed in phases over time, the applicant must demonstrate that the facilities would independently qualify as an eligible facility and that the facilities are not interdependent in purpose or the manner in which they will be owned, financed, constructed, operated, or

maintained or the facilities will be considered as one facility subject to the facility cost limitation imposed OAR 330-090-0150(1)(a).

(c) If the applicant does not demonstrate that the facilities are clearly and substantively distinguishable, the facilities will be considered as one facility subject to the facility cost limitation imposed OAR 330-090-0150(1)(a), except as otherwise provided in OAR 330-090-0120(4)(b).

(5) Standards When Replacing a Facility: If a facility is replaced or reconstructed and a preliminary certification is filed for a tax credit on the replacement or reconstructed facility, the tax credit for the replacement or reconstructed facility may be reduced by the amount of the original tax credit remaining for the original facility.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 4-1991, f. & cert. ef. 12-3-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07

330-090-0130

How ODOE Handles a BETC

(1) General:

(a) The Director reviews a BETC application in two stages. The first stage is called preliminary certification. The second stage is called final certification.

(b) To begin the review process for each stage, or to change the facility during the review process, an applicant must notify ODOE in writing.

(c) A facility owner planning to use a Pass-through Partner will complete and file the Pass-through Option application form as provided in OAR 330-090-0130(8).

(d) The Director may impose conditions in approving a preliminary or final certification that the facility must operate in accordance with the representations made by the applicant, and is in accordance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the Director.

(2) Preliminary Certification Preapproval: The Director may preapprove a preliminary certification for facilities that ODOE has reviewed and determined to be otherwise qualified under these rules. Such facilities may include but are not limited to:

(a) Alternate energy devices qualifying for a tax credit under OAR 330-070-0010 through 330-070-0097 for which ODOE has determined qualified costs, energy savings, and eligible tax credits. This does not preclude a facility owner from filing for preliminary certification to present for review and approval documentation supporting different determinations.

(b) Pre-qualified hybrid-electric vehicles.

(c) Facilities that have qualified for a tax credit based on review of a cooperative agreement organization, subject to the terms and conditions of the agreement.

(3) Preliminary Certification Review Process: Except as provided in OAR 330-090-0130(2), a completed application for preliminary certification shall be filed before work on a facility begins.

(a) Within 60 days after an application for preliminary certification is filed, the Director will decide if it is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the Director. If it is not complete, the incomplete application will not be accepted and will be returned to the applicant. The applicant may resubmit a completed application.

(b) Within 120 days after a completed application is filed, the Director will notify the applicant of the status of the application, if the applicant has not been notified otherwise that the application has been approved or denied.

(A) If it complies, the Director will approve the preliminary certification. The preliminary certification will state the amount of the tax credit approved. It may differ from the amount requested for reasons explained in the preliminary certification and based on these rules. Also, it will state any conditions that must be met before development, final certification, or some other event can occur. The Director will explain why each condition is needed to comply with these rules.

(B) If it does not comply, the Director will deny the application. No later than 60 days after the Director issues an order denying the application, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(C) An applicant can re-submit an application that is denied if features of the facility change, the applicant provides data the absence of which resulted in the denial, or other changes warrant. An application for prelim-

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inary certification can be amended or withdrawn by the applicant before the Director issues a final certification. If an application is amended, the time within which review occurs starts over. An applicant may request reconsideration of an application denial under this rule.

(4) A Completed Preliminary Certification Application Must Contain:

(a) The name, address, and phone number of the applicant and other parties involved in the facility.

(b) The applicant's federal tax identification number or social security number for use as an identification number in maintaining internal records. The applicant's federal identification number or social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) Facts that show the party that applies for the credit is an applicant under these rules and is in accord with OAR 330-090-0120(1).

(d) Facts that show the proposed use is a facility under these rules.

(e) Facility start and finish dates.

(f) Facts that describe the facility, its costs, its expected life, and its simple payback in the detail required by ODOE.

(g) The facts documenting substantial energy savings or a description of products that will result from the facility.

(h) The applicant's signature on the application attesting that it is correct.

(i) A written final order permit, license, or waiver by all applicable federal, state, and local agencies.

(A) Such final written actions show without doubt that the use complies with federal, state, and local laws as provided and subject to any conditions in the actions.

(B) If such an order, permit, license or waiver is not provided, the applicant must list all actions that are needed. The applicant must list what he or she has done or will do to achieve those actions.

(C) Preliminary certification may be approved without such order, permit, license, or waiver. In that event, the preliminary certification will require the applicant to file a copy of such final action before facility development begins. The Director may not grant final certification until all needed orders, permits, licenses or waivers as defined by these rules and the BETC Technical Requirements Manual are filed with ODOE.

(j) For a renewable energy resource facility, proof the resource level is adequate for a feasible facility. Such proof includes data listed in (A) through (G). Other data may be used if the listed data cannot be obtained at a reasonable cost, such as for RD&D facilities.

(A) For a solar energy facility: A sun chart and solar insolation data for the site.

(B) For a wind energy facility:

(i) The average monthly wind speed for 12 consecutive months at the proposed site. Measure wind speed at or as close as practically feasible to the hub height of a horizontal axis wind machine; or, the equator of a vertical axis wind machine; or

(ii) Measure wind speed at two heights for 12 consecutive months, the lowest one at least 10 meters above ground and estimate the wind speed at hub or equator height; or

(iii) In the event of less than one year's measurements at the proposed site, include the months of on-site measurements and supplement these data with estimated average monthly wind speeds at or near the proposed site to complete the 12 consecutive month data set. Such estimated data should be obtained from a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology; or

(iii) The estimated average monthly wind speed for 12 consecutive months at or near the proposed site obtained from a nationally recognized firm that provides estimated wind resource data based on advanced national wind mapping technology.

(iv) In the event that estimated wind resource data are used as described under section (3) and (4) above, the project owner shall provide to ODOE not later than 14 months after the start-up date, one year of actual monthly energy production data and, if available, actual monthly average wind speed data of the wind energy facility's site.

(C) For a geothermal energy facility (except a heat pump system): A plot of well heat temperature versus time at the design flow rate at steady state temperature.

(D) For a water power facility: One year of real or predicted average monthly stream flows. If flows are predicted, describe how.

(E) For a biomass energy facility: Data that show the resource is available in an amount that meets the facility's energy needs.

(F) For a waste heat recovery facility: A table showing how much waste heat is available and from what sources.

(G) For wood-fired boilers or furnaces with heat output capacities of less than 2 million British Thermal Units per Hour: Certification that they produce particle emissions equal to or less than 2.5 grams per hour for catalytic stoves and 4.5 g/hr for noncatalytic stoves by an independent wood stove laboratory currently certified by the United States Environmental Protection Agency (US EPA).

(k) The payment required by OAR 330-090-0150(2).

(l) For wind facilities:

(A) Equipment must meet the following:

(i) Each model of the system must demonstrate reliable operation of that model of equipment and show monthly data of average energy produced (kWh) and average wind speed for one consecutive year at a site with average annual wind speeds of at least 12 mph; or

(ii) Proof that the wind system model is listed on the official list of Qualified Wind Generators published by the Energy Trust of Oregon, the California Energy Commission, or the New York State Energy Research and Development Authority (NYSERDA) in effect as of March 20, 2008; or

(iii) The manufacturer's power curve, the estimated annual energy production based on the site's wind speed data, and the manufacturer's performance guarantees (on-line availability and power curve).

(B) The Oregon Department of Energy reserves the right to deny eligibility for any wind system for any reason including, but not limited to: poor generator performance, concerns about wind generation system design or quality of data presented; lack of manufacturing support for maintenance, warranties, etc., and insufficient experience with generator.

(m) For alternative fuel vehicle facilities: proof that the vehicle or conversion equipment is on DEQ's approved list in effect on December 1, 2007, the current exhaust emissions, the expected emission reductions, the expected annual energy and/or cost savings (if any).

(n) For alternative fuel vehicle facilities: the number of vehicles to be converted or new vehicles purchased, the expected annual fuel savings, the type of alternative fuel used, and the expected annual amount of alternative fuel used.

(o) For alternative fuel fueling station facilities: a description of fueling systems, the estimated number of alternative fuel vehicles that will use the station, the type of alternative fuel that will be dispensed, and the expected annual amount that will be dispensed.

(p) For transportation facilities: required documentation for each category specified by OAR 330-090-0110 (62) (a through n).

(q) For a waste-to-energy renewable energy resource facility that meets the definition of waste stream, includes the percentage of waste stream product to be recovered and a remediation plan for emissions and byproducts.

(r) Other data the Director requires to assure a facility complies with these rules.

(5) Preliminary Certification After Start of a Facility:

(a) If a facility has been started an applicant may file a written request with the Director for preliminary certification after facility start. Such a request must contain information in accord with OAR 330-090-0130(4) and (5)(c).

(b) Within 60 days after such a request is filed, the Director will approve, deny, or postpone preliminary certification. No later than 60 days after the Director issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) The Director may approve preliminary certification after facility start if:

(A) The request is in accord with OAR 330-090-0120; and

(B) Special circumstances make application for preliminary certification before facility start up a hardship. Such circumstances include process delays beyond the applicant's control, facility funding and energy supplies or markets; and

(C) The Director receives the waiver request within 90 days of facility start date. Under extraordinary circumstances the Director may extend the waiver period provided the facility serves the aims of the program.

(6) How Preliminary Certification Can be Revoked: The Director may revoke a preliminary certification for a reason listed in subsection (a) through (c) of this section. No later than 60 days after the Director issues an order denying the preliminary certification under this section, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(a) A facility is not started before 1,095 days (3 years) after either the application for preliminary certification was received or an amendment of the preliminary certification was approved.

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(b) Permits, waivers, and licenses required by OAR 330-090-0120 are not filed with ODOE before facility development starts.

(c) The facility undergoes changes without the changes being approved under OAR 330-090-0130(7).

(7) Changes Between Preliminary Certification and Final Certification: To change a facility that has a preliminary certification, the applicant must file a written request with the Director. The preliminary certification will not be amended unless the Director determines that the amendment is consistent with these rules.

(a) The request must describe the change and reasons for it. It must include changes in cost, tax credit amount, facility design, and materials. The change also must include the amount of energy saved or produced, financing changes, the applicant, or other matters.

(b) Within 60 days after the applicant files the change request, the Director will decide if the changed facility complies with these rules. The Director will provide written reasons for the decision.

(A) If it complies, the Director will issue an amended preliminary certification.

(B) If it does not comply, the Director will issue an order that denies the change. No later than 60 days after the Director issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) The applicant must inform the Director in writing if it does not proceed with the facility or proceeds without the tax credit. In that case, the Director will cancel the preliminary certification.

(8) Pass-through Option Process and Application:

(a) In addition to the application for preliminary certification, an applicant planning to transfer the tax credit certificate to a Pass-through Partner will complete and file the Pass-through Option Application form supplied by ODOE.

(b) If the Pass-through Partner is not yet secured, the facility owner will complete that section of the application by inserting "Partner to be identified" and will submit an updated application when the Pass-through Partner is secured.

(c) The tax credit may not be transferred until the facility owner has received the pass-through payment in full and notified ODOE.

(9) Final Certification Review Process and Application: An application for final certification must be filed after the facility is complete.

(a) Within 30 days after a final certification application is filed, the Director will decide if it is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the Director. If it is not complete, the incomplete application will not be accepted and will be returned to the applicant and the Director will inform the applicant in writing what is needed to make it complete. If it is complete, the Director will process the application.

(b) Within 60 days after a completed final certification application is filed, the Director will issue an order that explains how the application does or does not comply with subsection (9)(c) of this rule.

(A) If it complies, the Director will approve final certification. Final certification will state the amount of the tax credit approved. It may be up to 10 percent more than the amount approved in the preliminary certification. This contingency does not include any costs determined ineligible under OAR 330-090-0110(17)(b). For a Research, Development & Demonstration facility, final certification may be up to 10 percent more than the amount approved in the preliminary certification if those costs were incurred within six months after the facility begins to operate; and, if needed to make the facility work better.

(B) If it does not comply, the Director will deny the final certification. No later than 60 days after the Director issues such an order, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(C) A final certification application that is denied can be submitted again. A final certification application can be amended or withdrawn by the applicant. If an application is submitted again or amended, the time within which final certification review occurs starts over.

(D) If the Director does not issue a final certification within 60 days after an application is filed, the application is denied. No sooner than 61 days or later than 120 days after a complete application for final certification is filed, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(c) A final certification application must include:

(A) A statement that:

(i) The facility complies with conditions of the preliminary certification or with the provisions of OAR 330-090-0130(2); and

(ii) A statement that the facility remains in accord with local, state, and federal laws. This includes local land use laws.

(B) An account of the facility costs, including prorated costs.

(i) If facility costs are less than \$50,000, the account may be records of facility costs paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(17) unless required by the Director to supply verification from a certified public accountant, who is not otherwise employed by the facility owner or pass-through partner; or

(ii) If the facility costs are \$50,000 or more, a certified public accountant, who is not otherwise employed by the facility owner or pass-through partner, must complete a written review and summary of costs paid based on canceled checks, invoices, or receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(19); or

(iii) For a sustainable building facility, a copy of the facility U.S. Green Building Council (USGBC) Rating Certificate, USGBC Final LEED™ Review, Energy Performance Documentation, Narrative for Energy and Atmosphere Credit 1, Annual Solar Income as described in the BETC Technical Requirements and method of calculation will be accepted in lieu of facility cost receipts.

(C) Proof the facility is completed.

(D) If the facility is leased, a copy of the lease.

(E) For Alternative Fuel Vehicle facilities, proof of conversion must include a copy of vehicle emission test performance results from DEQ or a conversion shop.

(F) Other data the Director finds are needed to assure a facility complies with these rules.

(10) Changes After Final Certification:

(a) The applicant must inform the Director in writing within 60 days and before another tax credit is claimed if a facility that has a final certification is sold, traded, or disposed in some other way, or if the term of a leased facility has ended. In that case, the Director will revoke the final certification. No later than 60 days after the Director issues an order revoking the final certification, the applicant may request reconsideration as provided in OAR 330-090-0130(13).

(b) The new owner or new or renewed lessee of a facility may apply for final certification. The request must comply with OAR 330-090-0130(9). If it complies, the Director will issue a new final certification that credits the amount approved in the old final certification not already claimed by the former owner or lessee.

(11) Basis for Revoking Tax Credit Benefits: For any reason listed in (a) through (d), the Director may order revocation of a final certification that has not been transferred to a pass-through partner or of the tax credit benefits received by a facility owner who has transferred the final certification to a pass-through partner. A final certification transferred to a pass-through partner may not be revoked.

(a) The applicant does not send the Director written notice that:

(A) The facility has been moved; or

(B) Title to the facility has been conveyed; or

(C) The facility is not operating; or

(D) The term of a leased facility has ended.

(b) The applicant committed fraud or did not provide correct or complete facts in an application.

(c) The applicant does not provide information about the facility in a reasonable time after the Director requests it.

(d) Other changes in the facility or its owner or lessor that violate these rules in the years for which the credit is claimed.

(12) Loss of Tax Credit Benefits: If the Director finds under OAR 330-090-0130(11) that the tax credit benefits shall be revoked, the loss of the tax credit benefits will depend on whether the final certification has been transferred to a pass-through partner and the Director's findings under OAR 330-090-0130(11).

(a) If a final certification that had not been transferred to a pass-through partner is revoked, the facility owner may not claim tax credits for the years remaining as of the date of the revocation. The Director may also order payment to the State of Oregon by the facility owner of up to an amount equivalent to the full tax credit benefits, if the Director determines such action is warranted by the findings under OAR 330-090-0130(11).

(b) If a final certification had been transferred to a pass-through partner, the Director may order the facility owner to pay to the State of Oregon an amount equivalent to the net present value of tax credits for the years remaining as of the date the benefits were revoked. However, the Director may also order payment to the State of Oregon by the facility owner of up to an amount equivalent to the full net present value, if the Director deter-

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mines such action is warranted by the findings under OAR 330-090-0130(11).

(13) Request for Reconsideration: An applicant may request review of a decision under these rules by notifying the Director in writing no later than 60 days after the decision that is being reviewed. In addition to the written notification the applicant may request a meeting to further explain issues.

(14) Inspections: After an application is filed or a tax credit is claimed under these rules, ODOE may inspect the facility. ODOE will schedule the inspection during normal working hours, following reasonable notice to the facility operator.

(15) Public Access to Program Records:

(a) ODOE will not disclose data about a facility, unless allowed by an applicant or required to do so by ORS 192.410 to 192.500.

(b) ODOE will provide program records in a reasonable time to a person who requests them in writing, except as provided in subsection (a) of this section.

(c) ODOE may charge in advance not more than forty dollars per hour for research, and fifteen cents per page of photocopies of requested records.

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08

330-090-0140

Pass-through Option Facilities

(1) Accepting a Business Energy Tax Credit Certificate in Return for a Cash Payment Equivalent to Net Present Value of the Tax Credit.

(a) A Pass-through Partner may accept a Business Energy Tax Credit certificate on behalf of an applicant with a facility that is otherwise eligible for the tax credit in return for a cash payment equivalent to the net present value of the tax credit.

(b) Net Present Value: The minimum tax credit required to be passed through, known as the net present value, to an otherwise eligible applicant who purchases and owns a qualified facility. The net present value is applied to the final certified cost of the facility to determine the amount of the pass-through payment.

(A) The net present value will be determined and published at least each year and may be periodically revised by the Director.

(B) The Director may establish different net present value amounts for facilities with final certifications of more than \$20,000 and for facilities with final certifications of \$20,000 or less.

(a) 50% BETC more than \$20,000 in eligible costs — 33.5% pass-through rate

(b) 50% BETC \$20,000 or less in eligible costs — 43.5% pass-through rate

(c) 35% BETC more than \$20,000 in eligible costs — 25.5% pass-through rate

(d) 35% BETC \$20,000 or less in eligible costs — 30.5% pass-through rate

(e) Homebuilder Installed Renewable Energy Facility or High Performance Home tax credits – 87% of tax credit amount

(C) In making a determination of the pass-through amounts, the Director may consider the inflation rates, opportunity costs, and tax consequences among other factors.

(D) The net present value for the facility is the amount in effect when ODOE receives the pass-through option agreement declaring a pass-through partner, without regard to when the final certification is issued.

(2) An Investor-Owned Utility May Choose to Become a Utility Pass-Through Partner under the Provisions of this Section or Participate as a Pass-Through Partner under Other Provisions of These Rules that Would Apply to Any Other Pass-Through Partner.

(a) An investor-owned utility (IOU) that complies with this section may choose to become a Utility Pass-Through Partner.

(b) Preliminary certification standards and process:

(A) The application for preliminary certification must include an estimate of the total installation cost of the qualifying measures for which the applicant expects to make payments under OAR 330-090-0140(2) for that year.

(B) Within 60 days after an application for preliminary certification of the pass-through is filed, the Director shall decide if it is complete. If it is

not complete, the application will be rejected and returned to the applicant. The applicant may resubmit a complete application.

(C) Within 120 days after a completed application is filed, the Director shall notify the applicant of the status of the application, if the applicant has not been notified otherwise that the application has been approved or denied.

(D) The application for preliminary certification of the pass-through must include a supplemental work plan, which includes a copy, or reference to any proposed or required OPUC tariff and all evaluations of the program through which the pass-through will be delivered. The applicant and ODOE must mutually agree upon the work plan and program.

(c) Final certification standards and process: Final application for a pass-through tax credit must include a summary and total of each facility's owner, site address, facility description or type, number of dwelling units for multifamily facilities, total facility cost, energy savings, energy type saved and tax credit amount passed through. The applicant must retain records for each facility including all of the information required in 110-090-0130(4) of these rules.

(A) By the last working day of each month but not more than once per month, an applicant may apply to the Director for final certification. An application must contain:

(i) An itemized list of costs for each rental dwelling unit weatherized, premium efficient appliance, each alternative fuel vehicle, alternative fuel vehicle for company use, and alternative fuel fueling station, solar or other renewable resource and the total facility costs made that period for which the applicant is applying for credit.

(ii) The nominal value of credits for which the applicant applies.

(iii) The name, address, and phone number of the owner of each rental unit, alternative fuel vehicle, or alternative fuel fueling station listed in OAR 330-090-0140(2)(c)(A)(i).

(iv) Certification that each rental dwelling unit energy conservation measure (ECM) is defined in the BETC Technical Requirements as a measure that would qualify under or is a measure recommended in an energy audit completed under ORS 469.633(2).

(v) Certification that the ECMs paid for were installed and inspected in accordance with the IOU's appropriate allowed tariff(s).

(vi) Certification that the ECMs paid for were installed and inspected in accordance with the IOUs' Model Conservation Standards tariff or equivalent program as approved by ODOE.

(vii) If the facility costs are \$50,000 or more or if required by the Director, a written review and summary completed by a certified public accountant, who is not otherwise employed by the facility owner or pass-through partner, of costs paid based on canceled checks, invoices, receipts, a binding contract or agreement, or other documentation as may be required by OAR 330-090-0110(19).

(viii) If a contractor installed fueling station: the name, address, and phone number of the contractor as defined under OAR 330-090-0130(4) of this rule and the site at which the fueling station is installed.

(ix) The last final certification application filed each year must include complete evaluation(s) as defined in the applicant approved preliminary certification(s).

(B) Within 30 days after a final certification application is filed, the Director will approve or deny final certification, with reasons for the action. The Director will deny the final certification if the applicant has not complied with the requirements of this rule. No later than 60 days after the Director issues an order denying the final certification, the applicant may request reconsideration as provided in OAR 330-090-0130(13). The Director will approve final certification if:

(i) The applicant provides the owners of existing rental dwelling units listed in OAR 330-090-0140(2)(c)(A)(i) with:

(I) A low-interest loan, as defined by these rules, up to \$5,000 per dwelling unit for ECMs included in OAR 330-090-0140(2)(c)(A)(iv); or

(II) A cash payment for ECMs included in OAR 330-090-0140(2)(c)(A)(iv). The payment will be the lesser of 25 percent of the cost-effective portion of the energy conservation measures, including installation (but not including the dwelling owner's own labor), not to exceed the cost of those measures; or \$350 per rental dwelling unit, plus the present value of the tax credit accrued the IOU may claim; or,

(III) Such other payments approved by the Director to pay for ECMs in rental dwellings. This includes a payment for the present value of the tax credit that exceeds the amount of the low-interest loan. This payment will apply first to reduce the amount of the loan with the balance paid to the owner of the rental dwelling unit.

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(ii) The amount of the credit is the sum of payments and loans listed in OAR 330-090-0140(2)(c)(A)(i) for ECMs that were installed and inspected.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225
Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08

330-090-0150

Budget Limits and Payments for BETC

(1) Amount of Credits Allowed for a Facility:

(a) During any calendar year, a BETC preliminary certification will not be issued for more than:

(A) \$20 million in maximum eligible facility costs for a renewable energy resource facility renewable energy resource equipment manufacturing facility or high efficiency combined heat and power facility;

(B) \$10 million in maximum eligible facility costs for any other facility, not including homebuilder-installed renewable energy facility and high performance home Business Energy Tax Credits subject to subsection (b).

(b) A final certification for a Business Energy Tax Credit will not be issued for more than 50 percent of the cost not to exceed \$9,000 for a homebuilder-installed renewable energy facility or \$12,000 if the facility also constitutes a high performance home.

(2) Return of Review Charge for Returned Incomplete Applications: If under OAR 330-090-0130, ODOE does not accept and returns an incomplete application for preliminary certification, ODOE will also return the review charge submitted by the applicant.

(3) Cost of Reviews: ORS 469.217 requires applicants to pay all costs for the review of their applications. In order to meet this statutory requirement ODOE has established the following schedule for payments to accompany an application.

(a) Included with each application for preliminary certification must be a payment payable to ODOE, except for facilities qualifying under OAR 330-090-0130(2), for which a charge must be paid with the application for final certification. For all facilities except Sustainable Building Facilities or qualifying under OAR 330-090-0130(2), the payment will be 0.0060 multiplied by the facility eligible cost requested in the preliminary certification application, or a request to amend a preliminary certification, or \$30 whichever is greater. The maximum payment amount is \$35,000. The 0.0060 payment rate up to \$35,000 will be applied to all facilities with eligible costs of \$1 million and more that were received on or after January 1, 2007. For facilities with eligible costs of less than \$1 million, the 0.0060 payment rate up to \$35,000 will be applied to applications received on or after December 1, 2007. For Sustainable Building Facilities, the payment will be 0.0035 multiplied by the eligible cost calculated as required under these rules and as reported in the preliminary certification application, or a request to amend a preliminary certification. For facilities that qualify under OAR 330-090-0130(2), the payment will be 0.0035 multiplied by the eligible cost as requested in the final certification application.

(b) A refund of 75 percent of this payment may be granted up to 730 days (2 years) from the date the preliminary certification was approved by ODOE. Under no circumstances will an amount over 75 percent be refunded. Only refunds that are \$10 or greater will be issued. Amounts under \$10 will not be refunded. Conditions for which a refund may be granted are:

(A) Denial of an application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or

(B) Denial of a portion of costs requested in an application for preliminary certification or for facilities that qualify under OAR 330-090-0130(2) of final certification; or,

(C) A request to amend a preliminary certification resulting in decreased eligible costs. A refund will not be granted for any costs that are included in a pending certification.

(c) If a request to amend a preliminary certification results in facility re-certification with increased eligible cost then additional application payments will be paid for the additional cost as specified in (2)(a) of this rule.

(d) No facilities will be exempt from these requirements including applications for BETC pass-through under OAR 330-090-0140.

(e) The payment is a required part of a completed preliminary certification application per OAR 330-090-0130(4)(j), except for facilities that qualify under OAR 330-090-0130(2). Preliminary certifications will only be issued if the application is complete.

(f) In addition, the applicant may be required to pay for costs incurred in connection with the application that exceed these payments and which

the Director of ODOE determines are incurred solely in connection with processing the application. The applicant will be advised of any additional costs the applicant must pay before the costs are incurred.

Stat. Auth.: ORS 469.040 & 469.165
Stats. Implemented: ORS 469.185 - 469.225
Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 3-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 3-2008, f. & cert. ef. 3-21-08

Department of Environmental Quality Chapter 340

Rule Caption: Clarification of Proposed Orders in Contested Enforcement Cases.

Adm. Order No.: DEQ 5-2008

Filed with Sec. of State: 3-20-2008

Certified to be Effective: 3-20-08

Notice Publication Date: 6-1-2007

Rules Adopted: 340-011-0009, 340-011-0573

Rules Amended: 340-011-0005, 340-011-0510, 340-011-0515, 340-011-0575, 340-200-0040

Subject: Adopt OAR 340-011-0573 and amend OAR 340-011-0575 to allow any party to a DEQ contested case proceeding to file a motion requesting that the Administrative Law Judge (ALJ) revise the proposed order so as to provide a more clear and complete record on appeal to the Environmental Quality Commission (EQC).

Amend OAR 340-011-0510 to clarify that Environmental Law Specialists may provide lay representation on behalf of the DEQ in contested case proceedings involving license, permit, or certification revocations, modifications, and denials.

Correct a typographical error in OAR 340-011-0515 to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before ALJs or the EQC.

Adopt OAR 340-011-0009 and amend OAR 340-011-0005(5) to update the incorporation of portions of the Attorney General's Model Rules and incorporate the Attorney General's Model Rules for Miscellaneous and Orders in Other than Contested Cases.

Amend OAR 340-200-0040(2) to reflect the date that the rules are adopted by the EQC. This amendment is required because these amendments, if adopted, will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP), which is a requirement of the Clean Air Act.

Rules Coordinator: Larry McAllister—(503) 229-6412

340-011-0005

Definitions

Unless otherwise defined in this division, the words and phrases used in this division have the same meaning given them in ORS 183.310, the rules of the Office of Administrative Hearings, the Model Rules or other divisions in Oregon Administrative Rules, Chapter 340, as context requires.

(1) "Commission" means the Environmental Quality Commission.

(2) "Department" means the Department of Environmental Quality.

(3) "Director" means the director of the department or the director's authorized delegates.

(4) "Rules of the Office of Administrative Hearings" means the Attorney General's Rules, OAR 137-003-0501 through 137-003-0700.

(5) "Model Rules" or "Uniform Rules" means the Attorney General's Uniform and Model Rules of Procedure, OAR chapter 137, division 001 (excluding OAR 137-001-0008 through 137-001-0009), OAR chapter 137, division 003, and OAR chapter 137, division 004, as in effect on January 1, 2006.

(6) "Participant" means the respondent, a person granted either party or limited party status in the contested case under OAR 137-003-0535, an agency participating in the contested case under OAR 137-003-0540, and the department.

(7) "Respondent" means the person to whom a formal enforcement action is issued.

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(8) "Formal Enforcement Action" has the same meaning as defined in OAR 340, division 012.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 69(Temp), f. & cert. ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & cert. ef. 9-13-76; DEQ 25-1979, f. & cert. ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 10-1997, f. & cert. ef. 6-10-97; DEQ 3-1998, f. & cert. ef. 3-9-98; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 10-2002, f. & cert. ef. 10-8-02; DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08

340-011-0009

Incorporation of Attorney General's Uniform and Model Rules

The following Attorney General's Uniform and Model Rules of Procedure are adopted and incorporated into this Division, except as otherwise provided in this Chapter: OAR chapter 137, division 001 (excluding OAR 137-001-0008 through 137-001-0009), OAR chapter 137, division 003, and OAR chapter 137, division 004, as in effect on January 1, 2006.

Stat. Auth.: ORS 468.020, 183.341, 183.452

Stats. Implemented: ORS 468A.020, 468.070, 468.090 - 0140, 183.341, 183.452

Hist.: DEQ 5-2008, f. & cert. ef. 3-20-08

340-011-0510

Agency Representation by Environmental Law Specialist

(1) Environmental Law Specialists, and other department personnel as approved by the director, are authorized to appear on behalf of the department and commission in contested case hearings involving formal enforcement actions issued under OAR 340, division 012, and revocation, modification, or denial of licenses, permits, and certifications.

(2) Environmental Law Specialists or other approved personnel may not present legal argument as defined under OAR 137-003-0545 on behalf of the department or commission in contested case hearings.

(3) When the department determines it is necessary to consult with the Attorney General's office, an administrative law judge will provide a reasonable period of time for an agency representative to consult with the Attorney General's office and to obtain either written or oral legal argument, if necessary.

Stat. Auth.: ORS 183.341, 183.452 & 468.020

Stats. Implemented: ORS 183.452

Hist.: DEQ 16-1991, f. & cert. ef. 9-30-91; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0103 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08

340-011-0515

Authorized Representative of Respondent other than a Natural Person in a Contested Case Hearing

A corporation, partnership, limited liability company, unincorporated association, trust and government body may be represented by either an attorney or an authorized representative in a contested case hearing before an administrative law judge or the commission to the extent allowed by OAR 137-003-0555.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.452

Hist.: DEQ 6-2002(Temp), f. & cert. ef. 4-24-02, thru 10-21-02; DEQ 10-2002, f. & cert. ef. 10-8-02; Renumbered from 340-011-0106 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08

340-011-0573

Proposed Orders in Contested Cases

(1) Following the close of the record for a contested case hearing, the administrative law judge will issue a proposed order. The administrative law judge will serve the proposed order on each participant. A proposed contested case order must conform to the requirements of OAR 137-003-0645(3).

(2) Within 15 days after a proposed contested case order is issued, a participant in the contested case hearing may file a motion requesting that the administrative law judge clarify or supplement a proposed order. The motion must specify why the participant believes that the proposed order fails to conform to the requirements of OAR 137-003-0645(3) and recommend changes to the order. The motion must be served on the administrative law judge and all participants in the contested case hearing.

(3) The administrative law judge may grant or deny a motion filed under section (2) of this rule within 15 days. If the motion is granted, the administrative law judge may take the matter under advisement and reissue the proposed order unchanged or may issue an amended proposed order. If the administrative law judge fails to act on the motion within 15 days, the motion is deemed denied by operation of law.

(4) The filing of a timely motion for clarification under section (2) of this rule tolls the period for filing a Petition for Commission Review of the

proposed contested case order under OAR 340-011-0575. Tolling of the period begins on the day the motion is served on the administrative law judge and ends on the day the motion is denied, deemed denied by operation of law, or the proposed order is reissued without changes. If the administrative law judge issues an amended proposed order, the amended order will be treated as a new proposed order for purpose of the filing a timely Petition for Commission Review under OAR 340-011-0575.

(5) The motion for clarification authorized by this rule is intended to alter the provisions of OAR 137-003-0655 but not to eliminate the authority of the administrative law judge to correct a proposed order in the manner specified in section (2) of that rule.

(6) A motion for clarification and any response to a motion for clarification will be part of the record on appeal.

Stat. Auth.: ORS 468.020, 183.341, 183.452

Stats. Implemented: ORS 468A.020, 468.070, 468.090 - 0140, 183.341, 183.452

Hist.: DEQ 5-2008, f. & cert. ef. 3-20-08

340-011-0575

Review of Proposed Orders in Contested Cases

(1) For purposes of this rule, filing means receipt in the office of the director or other office of the department.

(2) Commencement of Review by the Commission: The proposed order will become final unless a participant or a member of the commission files, with the commission, a Petition for Commission Review within 30 days of service of the proposed order. The timely filing of a Petition is a jurisdictional requirement and cannot be waived. Any participant may file a petition whether or not another participant has filed a petition.

(3) Contents of the Petition for Commission Review. A petition must be in writing and need only state the participant's or a commissioner's intent that the commission review the proposed order. Each petition and subsequent brief must be captioned to indicate the participant filing the document and the type of document (for example: Respondents Exceptions and Brief; Department's Answer to Respondent's Exceptions and Brief).

(4) Procedures on Review:

(a) Exceptions and Brief: Within 30 days from the filing of a petition, the participant(s) filing the petition must file written exceptions and brief. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the participant relies. The brief must include the arguments supporting these alternative findings of fact, conclusions of law and order. Failure to take an exception to a finding or conclusion in the brief, waives the participant's ability to later raise that exception.

(b) Answering Brief: Each participant, except for the participant(s) filing that exceptions and brief, will have 30 days from the date of filing of the exceptions and brief under subsection (5)(a), in which to file an answering brief.

(c) Reply Brief: If an answering brief is filed, the participant(s) who filed a petition will have 20 days from the date of filing of the answering brief under subsection (5)(b), in which to file a reply brief.

(d) Briefing on Commission Invoked Review: When one or more members of the commission wish to review the proposed order, and no participant has timely filed a Petition, the chair of the commission will promptly notify the participants of the issue that the commission desires the participants to brief. The participants must limit their briefs to those issues. The chair of the commission will also establish the schedule for filing of briefs. When the commission wishes to review the proposed order and a participant also requested review, briefing will follow the schedule set forth in subsections (a), (b), and (c) of this section.

(e) Extensions: The commission or director may extend any of the time limits contained in section (5) of this rule. Each extension request must be in writing and filed with the commission before the expiration of the time limit. Any request for an extension may be granted or denied in whole or in part.

(f) Dismissal: The commission may dismiss any petition, upon motion of any participant or on its own motion, if the participant(s) seeking review fails to timely file the exceptions or brief required under subsection (5)(a) of this rule. A motion to dismiss made by a participant must be filed within 45 days after the filing of the Petition. At the time of dismissal, the commission will also enter a final order upholding the proposed order.

(g) Oral Argument: Following the expiration of the time allowed the participants to present exceptions and briefs, the matter will be scheduled for oral argument before the commission.

ADMINISTRATIVE RULES

(5) Additional Evidence: A request to present additional evidence must be submitted by motion and must be accompanied by a statement showing good cause for the failure to present the evidence to the administrative law judge. The motion must accompany the brief filed under subsection (5)(a) or (b) of this rule. If the commission grants the motion or decides on its own motion that additional evidence is necessary, the matter will be remanded to an administrative law judge for further proceedings.

(6) Scope of Review: The commission may substitute its judgment for that of the administrative law judge in making any particular finding of fact, conclusion of law, or order except as limited by OAR 137-003-0655 and 137-003-0665.

(7) Service of documents on other participants: All documents required to be filed with the commission under this rule must also be served upon each participant in the contested case hearing. Service can be completed by personal service, certified mail or regular mail.

Stat. Auth.: ORS 183.341 & 468.020
Stats. Implemented: ORS 183.460, 183.464 & 183.470
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 115, f. & ef. 7-6-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0132 by DEQ 18-2003, f. & cert. ef. 12-12-03; DEQ 5-2008, f. & cert. ef. 3-20-08

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal **Clean Air Act, 42 U.S.C.A 7401 to 7671q**.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on October 17, 2007.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.035
Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-f1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. &

cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08

Department of Fish and Wildlife Chapter 635

Rule Caption: Deschutes and Hood River Spring Chinook Sport Fisheries.

Adm. Order No.: DFW 26-2008(Temp)

Filed with Sec. of State: 3-17-2008

Certified to be Effective: 4-15-08 thru 7-31-08

Notice Publication Date:

Rules Amended: 635-018-0090

Subject: Amend rule to allow the sport harvest of adipose fin-clipped chinook salmon in the Deschutes and Hood rivers beginning April 15, 2008.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-018-0090

Inclusions and Modifications

(1) The **2008 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2008 Oregon Sport Fishing Regulations**.

(2) The Deschutes River from the mouth at the I-84 Bridge upstream to Sherars Falls is open to angling for trout, steelhead and adipose fin clipped Chinook salmon from April 15, 2008 to July 31, 2008.

(a) The catch limit is one adult adipose fin clipped salmon per day and five adipose fin clipped jack salmon per day.

(b) All non-adipose fin clipped Chinook salmon must be released unharmed.

(c) It is *unlawful* to continue to angle between Sherars Falls and the upper railroad trestle (three miles) after taking a daily bag limit of 1 adult Chinook salmon.

(3) The Hood River from the mouth to Powerdale Dam is open to angling for adipose fin-clipped Chinook salmon from April 15 through June 30, 2008.

(a) The catch limit for Chinook salmon is two adipose fin-clipped adults and five adipose fin-clipped jacks per day. All salmon that have not been adipose fin-clipped must be released unharmed.

(b) All other catch limits and restrictions remain unchanged from those listed for Hood River in the **2008 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 496.138 & 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2003(Temp), f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04, Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-

ADMINISTRATIVE RULES

2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 59-2006(Temp), f. 7-10-06, cert. ef. 8-1-06 thru 10-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 18-2007(Temp), f. 3-22-07, cert. ef. 4-15-07 thru 7-31-07; DFW 55-2007(Temp), f. 7-6-07, cert. ef. 8-1-07 thru 10-31-07; Administrative correction 11-17-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 26-2008(Temp), f. 3-17-08, cert. ef. 4-15-08 thru 7-31-08

Rule Caption: Removal of Lake Billy Chinook Bonus Bag Limit for Kokanee.

Adm. Order No.: DFW 27-2008(Temp)

Filed with Sec. of State: 3-24-2008

Certified to be Effective: 5-1-08 thru 10-27-08

Notice Publication Date:

Rules Amended: 635-018-0090

Subject: Rule amendments suspend the 25 fish bonus bag limit for kokanee trout in Lake Billy Chinook from May 1 through October 27, 2008.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-018-0090

Inclusions and Modifications

(1) The **2008 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2008 Oregon Sport Fishing Regulations**.

(2) The Deschutes River from the mouth at the I-84 Bridge upstream to Sherars Falls is open to angling for trout, steelhead and adipose fin clipped Chinook salmon from April 15, 2008 to July 31, 2008.

(a) The catch limit is one adult adipose fin clipped salmon per day and five adipose fin clipped jack salmon per day.

(b) All non-adipose fin clipped Chinook salmon must be released unharmed.

(c) It is unlawful to continue to angle between Sherars Falls and the upper railroad trestle (three miles) after taking a daily bag limit of 1 adult Chinook salmon.

(3) The Hood River from the mouth to Powerdale Dam is open to angling for adipose fin-clipped Chinook salmon from April 15 through June 30, 2008.

(a) The catch limit for Chinook salmon is two adipose fin-clipped adults and five adipose fin-clipped jacks per day. All salmon that have not been adipose fin-clipped must be released unharmed.

(b) All other catch limits and restrictions remain unchanged from those listed for Hood River in the 2008 Oregon Sport Fishing Regulations.

(4) The Lake Billy Chinook (Round Butte, Jefferson Co.) kokanee bonus bag limit is removed from May 1 to October 21, 2008 and during this period the following restrictions apply:

(a) Combined trout bag limit, including kokanee, is 5 per day, 2 daily limits in possession;

(b) Bull trout limit is 1 per day and 1 in possession, 24-inch minimum length;

(c) It is unlawful to continue angling for any species once a bull trout has been harvested.

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

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert.

ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04; Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 59-2006(Temp), f. 7-10-06, cert. ef. 8-1-06 thru 10-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 18-2007(Temp), f. 3-22-07, cert. ef. 4-15-07 thru 7-31-07; DFW 55-2007(Temp), f. 7-6-07, cert. ef. 8-1-07 thru 10-31-07; Administrative correction 11-17-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 26-2008(Temp), f. 3-17-08, cert. ef. 4-15-08 thru 7-31-08; DFW 27-2008(Temp), f. 3-24-08, cert. ef. 5-1-08 thru 10-27-08

Rule Caption: Sport Sturgeon Fishery Closed In the John Day Pool.

Adm. Order No.: DFW 28-2008(Temp)

Filed with Sec. of State: 3-24-2008

Certified to be Effective: 3-26-08 thru 9-10-08

Notice Publication Date:

Rules Amended: 635-023-0095

Subject: Amended rule to prohibit retention of sturgeon in the Columbia River and tributaries from John Day Dam upstream to McNary Dam. Revision is consistent with Joint State Action taken by the states of Oregon and Washington on March 19, 2008.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-023-0095

Sturgeon Season

(1) The **2008 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2008 Oregon Sport Fishing Regulations**.

(2) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam is open to the retention of white sturgeon four days per week, Thursdays through Sundays, during the following periods:

(a) January 1 through July 31; and

(b) October 1 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through September 30.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

(a) January 1 through April 30; and

(b) May 10 through June 24.

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 9 and from June 25 through December 31.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon between 42-60 inches in overall length may be retained.

(7) During the fishing period as identified in subsection (4)(b) of this rule, only white sturgeon between 45-60 inches in overall length may be retained.

(8) The Columbia River and tributaries between The Dalles Dam and John Day Dam are closed to the retention of sturgeon effective 12:01 a.m. Saturday, March 15, 2008.

(9) The Columbia River and tributaries upriver from John Day Dam upstream to McNary Dam is closed to the retention of sturgeon effective 12:01 a.m. Wednesday, March 26, 2008.

(10) Angling for sturgeon is prohibited from Marker 85 upstream to Bonneville Dam, from Highway 395 Bridge upstream to McNary Dam, and from the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(11) Retention of green sturgeon is prohibited all year in all areas.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. &

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cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08

Rule Caption: Limited Experiment To Retrieve Derelict Ocean Dungeness Crab Gear In-season.

Adm. Order No.: DFW 29-2008(Temp)

Filed with Sec. of State: 3-25-2008

Certified to be Effective: 3-25-08 thru 8-31-08

Notice Publication Date:

Rules Amended: 635-005-0055

Rules Suspended: 635-005-0055(T)

Subject: Amended rule specifies conditions allowing a limited experiment to retrieve derelict commercial ocean Dungeness crab fishing gear in-season and transport it to shore.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-005-0055

Fishing Gear

It is *unlawful* for commercial purposes to:

(1) Take crab by any means other than crab rings or crab pots (ORS 509.415); a crab ring is any fishing device that allows crab unrestricted entry or exit while fishing.

(2) Possess on a vessel, use, control, or operate any crab pot which is greater than thirteen cubic feet in volume, calculated using external dimensions.

(3) Possess on a vessel, use, control, or operate any crab pot which does not include a minimum of two circular escape ports of at least 4-1/4 inches inside diameter located on the top or side of the pot. If escape ports are placed on the side of the pot, they shall be located in the upper half of the pot.

(4) Possess on a vessel, use, control, or operate any crab pot which does not have a release mechanism. Acceptable release mechanisms are:

(a) Iron lid strap hooks constructed of iron or "mild" steel rod (not stainless steel) not to exceed 1/4-inch (6mm) 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) To retrieve from the ocean, including the Columbia River, and transport to shore up to six crab pot(s) 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,

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(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; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 123-2006(Temp), f. 11-28-06, cert. ef. 12-1-06 thru 3-7-06; DFW 135-2006(Temp), f. & cert. ef. 12-26-06 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 41-2007, f. & cert. ef. 6-8-07; DFW 82-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 10-31-07; DFW 113-2007, f. & cert. ef. 10-25-07; DFW 127-2007(Temp), f. & cert. ef. 12-11-07 thru 6-7-08; DFW 129-2007(Temp), f. & cert. ef. 12-14-07 thru 6-7-08; DFW 29-2008(Temp), f. & cert. ef. 3-25-08 thru 8-31-08

Rule Caption: Modified Boundaries for 2008 Youngs Bay Select Area Commercial Salmon and Sturgeon Fisheries.

Adm. Order No.: DFW 30-2008(Temp)

Filed with Sec. of State: 3-27-2008

Certified to be Effective: 3-30-08 thru 8-28-08

Notice Publication Date:

Rules Amended: 635-042-0145

Rules Suspended: 635-042-0145(T)

Subject: Amend rule expands the boundaries of fishing periods adopted previously for commercial fishing seasons for salmon and sturgeon in Youngs Bay Select area fisheries. Modifications are consistent with Oregon State Action taken March 27, 2008.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-042-0145

Youngs Bay Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay.

(a) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (A); the spring fishery, paragraph (B); and summer fishery, paragraph (C), as follows:

(A) Winter Season:

(i) 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.

(ii) 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.

(iii) 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.

(B) Spring Season:

(i) 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; Noon Monday, May 12 to Noon Friday, May 16, 2008; Noon 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.

(C) Summer Season:

(i) 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.

(b) 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.

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(a) It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter season 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;

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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 16-2007(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

Rule Caption: 2008 Commercial Spring Chinook Tangle Net Fishery in the Columbia River.

Adm. Order No.: DFW 31-2008(Temp)

Filed with Sec. of State: 3-31-2008

Certified to be Effective: 4-1-08 thru 9-27-08

Notice Publication Date:

Rules Amended: 635-042-0022

Subject: Amended rule allows the commercial spring Chinook fishery in the mainstream Columbia River from the west powerlines on Hayden Island upstream to Beacon Rock (Zones 4 and 5). Modifications are consistent with joint state action taken on March 31, 2008 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-042-0022

Spring Chinook Gill Net and Tangle Net Fisheries

(1) Adipose fin-clipped Chinook salmon, white sturgeon and shad may be taken by tangle net for commercial purposes from the west powerlines on Hayden Island upstream to Beacon Rock (part of Zone 4 and all of Zone 5) during the following periods:

Tuesday, April 1, 2008 from 1:00 p.m. to 11:00 p.m. (10 hours).

(a) Individual fishing periods will not exceed. Fishing periods may occur from one hour after sunset on Mondays until one hour prior to sunrise on Wednesdays.

(b) White sturgeon possession and sales restrictions by each participating vessel will be determined inseason based on gear type and number of fish remaining on the fish guideline.

(c) Retention of green sturgeon is prohibited.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

(3) During the spring Chinook gill net fishery:

(a) It is *unlawful* to use a gill net having a mesh size less than 8 inches or more than 9-3/4 inches.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(4) During the spring Chinook tangle net fishery:

(a) It is *unlawful* to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4-1/4 inches stretched taut. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets authorized for this fishery, and nets with a mesh size of ≤ 2 inches or ≥ 9 inches are not required to be properly stored. Other permanent gear regulations remain in effect.

(b) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(5) Nets shall not exceed 900 feet (150 fathoms) in length. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(6) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is

allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4-1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

(b) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, along with a red cork every 25 fathoms as required in (5) above, must have two red corks at each end of the net.

(7) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

(8) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(9) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

(10) It is *unlawful* for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(11) It is *unlawful* to fish more than one net from a licensed commercial fishing boat at any one time.

(12) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(13) Non-legal sturgeon, nonadipose fin-clipped Chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box.

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) All salmon and steelhead that are bleeding, in lethargic condition, or appearing dead must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39-1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per minute of fresh river water into each chamber. The fisher must demonstrate to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1-3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber, on either the same or opposite end as the inlet.

(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(14) At least one fisher on each boat engaged in the fishery must have in possession a valid certificate issued by a representative of the Oregon Department of Fish and Wildlife (ODFW) or the Washington Department of Fish and Wildlife (WDFW) that indicates the fisher had attended a one-day workshop hosted by ODFW or WDFW to educate fishers on regulations and best methods for conduct of the fishery. No individual may obtain

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more than one tangle net certificate. The certificate must be displayed to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers upon request.

(15) Nothing in this section sets any precedent for any fishery after the 2006 spring Chinook fishery. The fact that an individual may hold a tangle net certificate in spring 2006 does not entitle the certificate holder to participate in any other fishery. If ODFW authorizes a tangle net fishery in spring 2007 or at any other time, ODFW may establish qualifications and requirements that are different from those established for 2006. In particular, ODFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

(16) As authorized by OAR-006-0140 owners or operators of commercial fishing vessels must cooperate with Department fishery observers, or observers collecting data for the Department, when asked by the Department to carry and accommodate an observer on fishing trips for observation and sampling during an open fishery.

(17) Closed waters, as described in OAR 635-042-0005 for Washougal River and Sandy River sanctuaries are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.030
Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp) f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. & cert. ef. 3-22-04, cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04; Administrative correction 8-19-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05; DFW 11-2005(Temp), f. & cert. ef. 3-2-05, cert. ef. 3-3-05 & 7-31-05; DFW 13-2005(Temp), f. & cert. ef. 3-7-05 thru 7-31-05; DFW 14-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 7-31-05; DFW 20-2005(Temp), f. & cert. ef. 3-29-05 thru 3-30-05; DFW 21-2005(Temp), f. & cert. ef. 3-31-05 thru 4-1-05; Administrative correction, 4-20-05; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 7-2006(Temp), f. & cert. ef. 2-23-06 thru 7-31-06; DFW 9-2006(Temp), f. & cert. ef. 3-1-06, cert. ef. 3-2-06 thru 7-31-06; DFW 10-2006(Temp), f. & cert. ef. 3-6-06, cert. ef. 3-7-06 thru 7-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; DFW 12-2006(Temp), f. & cert. ef. 3-13-06, cert. ef. 3-14-06 thru 7-31-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 30-2006(Temp), f. & cert. ef. 5-18-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; Administrative correction 8-22-06; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 17-2007(Temp), f. & cert. ef. 3-20-07 thru 9-15-07; DFW 19-2007(Temp), f. & cert. ef. 3-22-07 thru 9-17-07; DFW 44-2007(Temp), f. & cert. ef. 6-14-07 thru 9-17-07; Administrative correction 9-18-07; DFW 31-2008(Temp), f. & cert. ef. 4-1-08 thru 9-27-08

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Rule Caption: Sales of Steelhead and Walleye by Fish Dealers, Cannermen, Buyers and Retailers.

Adm. Order No.: DFW 32-2008(Temp)

Filed with Sec. of State: 4-1-2008

Certified to be Effective: 4-1-08 thru 9-27-08

Notice Publication Date:

Rules Amended: 635-006-0225, 635-006-0230

Subject: Amended rules to clarify existing restrictions on possession and sales of tribal caught steelhead trout and walleye taken legally by Treaty Indian fishers in commercial fisheries within the Columbia River Basin. And, rules were modified to allow the possession and sales by any wholesale fish dealer, canner, buyer or retailer in Oregon, of legally purchased steelhead trout or Walleye taken from outside the Columbia River Basin, consistent with reporting requirements contained within OAR 635-006-0200.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-006-0225

Purchase, Record, Report, and Sale of Steelhead Trout and Walleye from Treaty Indian Fisheries

(1) Steelhead trout and walleye lawfully taken by treaty Indians during commercial fishing seasons may be purchased by licensed wholesale fish dealers, cannermen, or buyers pursuant to restrictions set forth in sections (2) through (5) of this rule. In addition, steelhead trout and walleye taken lawfully by treaty Indians during commercial fishing seasons may be purchased and/or possessed by any individual pursuant to restrictions set forth in section (6) of this rule.

(2) The wholesale fish dealer, canner, or buyer, shall at the time of purchase, enter the purchase of steelhead and walleye on a Department of Fish and Wildlife Columbia River Fish Receiving Ticket. Information required to be entered on the fish receiving ticket shall be the same as required by OAR 635-006-0210 and 635-006-0212 for each purchase of food fish.

(3) The record keeping and reporting requirements for food fish as set forth in OAR 635-006-0200 through 635-006-0215 shall apply to all steelhead trout and walleye purchases.

(4) In addition to the records required in connection with the purchase of steelhead trout, and walleye, a record of all sales of steelhead and walleye shall be maintained by licensed wholesale fish dealers, cannermen, or buyers for a period of three years and shall be subject to inspection by the Director, the Director's authorized agent, or the State Police. Such record of sales shall include as a minimum:

(4) In addition to the records required in connection with the purchase of steelhead trout, and walleye, a record of all sales of steelhead and walleye shall be maintained by licensed wholesale fish dealers, cannermen, or buyers for a period of three years and shall be subject to inspection by the Department or the State Police. Such record of sales shall include as a minimum:

(a) Name and address of each person to whom either steelhead or walleye are sold;

(b) Quantity in pounds of each sale identified as whole or round weight or dressed weight;

(c) Date of each delivery.

(5) It is *unlawful* for any wholesale fish dealer, canner, or buyer in possession of legally purchased steelhead or walleye from treaty Indians to sell or distribute such fish in Oregon except to another wholesale fish dealer, canner, or buyer.

(6) Steelhead trout and walleye taken lawfully by treaty Indians during commercial fishing seasons may be purchased from a treaty Indian and/or possessed by any individual so long as said fish are accompanied by a written document listing treaty Indian taker's name, tribal enrollment number, number of fish, approximate weight of each fish, date and location where taken, date of sale, and purchaser's name. It is *unlawful* for any individual other than a treaty Indian to sell steelhead trout or walleye. The provisions in this section (6) apply to individuals other than licensed wholesale fish dealers, cannermen and buyers.

Stat. Auth.: ORS 506.119, 508.530 & 509.031
Stats. Implemented: ORS 498.022, 506.129, 508.535 & 508.550
Hist.: FWC 39, f. & cert. ef. 1-23-76, Renumbered from 625-040-0150, Renumbered from 635-036-0595; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 41-1995, f. 5-23-95, cert. ef. 5-24-95; FWC 51-1997(Temp), f. & cert. ef. 8-27-97; DFW 73-1998, f. & cert. ef. 8-28-98; DFW 32-2008(Temp), f. & cert. ef. 4-1-08 thru 9-27-08

635-006-0230

When Possession of Steelhead or Walleye Unlawful

Except as otherwise provided by law or rule, it is *unlawful* for any person to have in possession either steelhead trout or walleye taken by any means other than by angling. Notwithstanding OAR 635-006-0225, it is lawful for any wholesale fish dealer, canner, buyer or retailer to possess and sell, in Oregon, legally purchased steelhead trout or Walleye taken from outside the Columbia River Basin, consistent with reporting requirements contained within OAR 635-006-0200.

Stat. Auth.: ORS 496.138 & 509.031
Stats. Implemented: ORS 496.138 & 509.031
Hist.: FWC 41, f. & cert. ef. 1-23-76, Renumbered from 625-040-0155, Renumbered from 635-036-0600; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 41-1995, f. 5-23-95, cert. ef. 5-24-95; DFW 32-2008(Temp), f. & cert. ef. 4-1-08 thru 9-27-08

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Rule Caption: 2008 Commercial Spring Chinook Tangle Net Fishery Continued In the Columbia River.

Adm. Order No.: DFW 33-2008(Temp)

Filed with Sec. of State: 4-7-2008

Certified to be Effective: 4-8-08 thru 9-27-08

Notice Publication Date:

Rules Amended: 635-042-0022

Subject: Amended rule extends the commercial spring Chinook tangle net fishery in the mainstream Columbia River from the west powerlines on Hayden Island upstream to Beacon Rock (Zones 4 and 5). Modifications are consistent with action taken April 7, 2008 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-042-0022

Spring Chinook Gill Net and Tangle Net Fisheries

(1) Adipose fin-clipped Chinook salmon, white sturgeon and shad may be taken by tangle net for commercial purposes from the west powerlines on Hayden Island upstream to Beacon Rock (part of Zone 4 and all of Zone 5) during the following periods: Tuesday, April 1, 2008 from 1:00

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p.m. to 11:00 p.m. (10 hours). Tuesday, April 8, 2008 from 7:00 a.m. to 11:00 p.m. (16 hours).

(a) Individual fishing periods will not exceed. Fishing periods may occur from one hour after sunset on Mondays until one hour prior to sunrise on Wednesdays.

(b) White sturgeon possession and sales restrictions by each participating vessel will be determined inseason based on gear type and number of fish remaining on the fish guideline.

(c) Retention of green sturgeon is prohibited.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

(3) During the spring Chinook gill net fishery:

(a) It is unlawful to use a gill net having a mesh size less than 8 inches or more than 9-3/4 inches.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(4) During the spring Chinook tangle net fishery:

(a) It is unlawful to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4-1/4 inches stretched taut. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets authorized for this fishery, and nets with a mesh size of ≤ 2 inches or ≥ 9 inches are not required to be properly stored. Other permanent gear regulations remain in effect.

(b) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(5) Nets shall not exceed 900 feet (150 fathoms) in length. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(6) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4-1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

(b) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, along with a red cork every 25 fathoms as required in (5) above, must have two red corks at each end of the net.

(7) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

(8) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(9) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

(10) It is unlawful for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(11) It is unlawful to fish more than one net from a licensed commercial fishing boat at any one time.

(12) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(13) Non-legal sturgeon, nonadipose fin-clipped Chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box.

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) All salmon and steelhead that are bleeding, in lethargic condition, or appearing dead must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39-1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per minute of fresh river water into each chamber. The fisher must demonstrate to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1-3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber, on either the same or opposite end as the inlet.

(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(14) At least one fisher on each boat engaged in the fishery must have in possession a valid certificate issued by a representative of the Oregon Department of Fish and Wildlife (ODFW) or the Washington Department of Fish and Wildlife (WDFW) that indicates the fisher had attended a one-day workshop hosted by ODFW or WDFW to educate fishers on regulations and best methods for conduct of the fishery. No individual may obtain more than one tangle net certificate. The certificate must be displayed to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers upon request.

(15) Nothing in this section sets any precedent for any fishery after the 2006 spring Chinook fishery. The fact that an individual may hold a tangle net certificate in spring 2006 does not entitle the certificate holder to participate in any other fishery. If ODFW authorizes a tangle net fishery in spring 2007 or at any other time, ODFW may establish qualifications and requirements that are different from those established for 2006. In particular, ODFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

(16) As authorized by OAR-006-0140 owners or operators of commercial fishing vessels must cooperate with Department fishery observers, or observers collecting data for the Department, when asked by the Department to carry and accommodate an observer on fishing trips for observation and sampling during an open fishery.

(17) Closed waters, as described in OAR 635-042-0005 for Washougal River and Sandy River sanctuaries are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp) f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. & cert. ef. 3-22-04, cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04; Administrative correction 8-19-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05; DFW 11-2005(Temp), f. & cert. ef. 3-3-05 & 7-31-05; DFW 13-2005(Temp), f. & cert. ef. 3-7-05 thru 7-31-05; DFW 14-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; DFW 20-2005(Temp), f. & cert. ef. 3-29-05 thru 3-30-05; DFW 21-2005(Temp), f. & cert. ef. 3-31-05 thru 4-1-05; Administrative correction, 4-20-05; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 7-2006(Temp), f. & cert. ef. 2-23-06 thru 7-31-06; DFW 9-2006(Temp), f. & cert. ef. 3-1-06, cert. ef. 3-2-06 thru 7-31-06; DFW 10-2006(Temp), f. & cert. ef. 3-6-06, cert. ef. 3-7-06 thru 7-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; DFW 12-2006(Temp), f. & cert. ef. 3-13-06, cert. ef. 3-14-06 thru 7-31-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 30-2006(Temp), f. & cert. ef. 5-18-06 thru 7-31-06; DFW 32-

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2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; Administrative correction 8-22-06; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 17-2007(Temp), f. & cert. ef. 3-20-07 thru 9-15-07; DFW 19-2007(Temp), f. & cert. ef. 3-22-07 thru 9-17-07; DFW 44-2007(Temp), f. & cert. ef. 6-14-07 thru 9-17-07; Administrative correction 9-18-07; DFW 31-2008(Temp), f. & cert. ef. 4-1-08 thru 9-27-08; DFW 33-2008(Temp), f. & cert. ef. 4-7-08, cert. ef. 4-8-08 thru 9-27-08

Rule Caption: 2008 Columbia River Commercial Spring Chinook Tangle Net Fishery Extended by 12 hours.

Adm. Order No.: DFW 34-2008(Temp)

Filed with Sec. of State: 4-14-2008

Certified to be Effective: 4-15-08 thru 9-27-08

Notice Publication Date:

Rules Amended: 635-042-0022

Rules Suspended: 635-042-0022(T)

Subject: Amended rule extends the commercial spring Chinook tangle net fishery in the mainstream Columbia River by 12 hours, from the west powerlines on Hayden Island upstream to beacon Rock (Zones 4 and 5). Modification are consistent with action taken April 14, 2008 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-042-0022

Spring Chinook Gill Net and Tangle Net Fisheries

(1) Adipose fin-clipped Chinook salmon, white sturgeon and shad may be taken by tangle net for commercial purposes from the west powerlines on Hayden Island upstream to Beacon Rock (part of Zone 4 and all of Zone 5) during the following periods:

Tuesday, April 1, 2008 from 1:00 p.m. to 11:00 p.m. (10 hours).

Tuesday, April 8, 2008 from 7:00 a.m. to 11:00 p.m. (16 hours).

Tuesday, April 15, 2008 from 3:00 a.m. to 3:00 p.m. (12 hours).

(a) Individual fishing periods will not exceed. Fishing periods may occur from one hour after sunset on Mondays until one hour prior to sunrise on Wednesdays.

(b) White sturgeon possession and sales restrictions by each participating vessel will be determined inseason based on gear type and number of fish remaining on the fish guideline.

(c) Retention of green surgenon is prohibited.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

(3) During the spring Chinook gill net fishery:

(a) It is *unlawful* to use a gill net having a mesh size less than 8 inches or more than 9-3/4 inches.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(4) During the spring Chinook tangle net fishery:

(a) It is *unlawful* to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4-1/4 inches stretched taut. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater. Nets authorized for this fishery, and nets with a mesh size of ≤ 2 inches or ≥ 9 inches are not required to be properly stored. Other permanent gear regulations remain in effect.

(b) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(5) Nets shall not exceed 900 feet (150 fathoms) in length. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(6) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin

of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submersed corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4-1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

(b) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, along with a red cork every 25 fathoms as required in (5) above, must have two red corks at each end of the net.

(7) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

(8) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(9) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

(10) It is *unlawful* for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(11) It is *unlawful* to fish more than one net from a licensed commercial fishing boat at any one time.

(12) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(13) Non-legal sturgeon, nonadipose fin-clipped Chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box.

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) All salmon and steelhead that are bleeding, in lethargic condition, or appearing dead must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39-1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per minute of fresh river water into each chamber. The fisher must demonstrate to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1-3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber, on either the same or opposite end as the inlet.

(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(14) At least one fisher on each boat engaged in the fishery must have in possession a valid certificate issued by a representative of the Oregon Department of Fish and Wildlife (ODFW) or the Washington Department of Fish and Wildlife (WDFW) that indicates the fisher had attended a one-day workshop hosted by ODFW or WDFW to educate fishers on regulations and best methods for conduct of the fishery. No individual may obtain more than one tangle net certificate. The certificate must be displayed to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers upon request.

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(15) Nothing in this section sets any precedent for any fishery after the 2006 spring Chinook fishery. The fact that an individual may hold a tangle net certificate in spring 2006 does not entitle the certificate holder to participate in any other fishery. If ODFW authorizes a tangle net fishery in spring 2007 or at any other time, ODFW may establish qualifications and requirements that are different from those established for 2006. In particular, ODFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

(16) As authorized by OAR-006-0140 owners or operators of commercial fishing vessels must cooperate with Department fishery observers, or observers collecting data for the Department, when asked by the Department to carry and accommodate an observer on fishing trips for observation and sampling during an open fishery.

(17) Closed waters, as described in OAR 635-042-0005 for Washougal River and Sandy River sanctuaries are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.030
Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp), f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. & cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04; Administrative correction 8-19-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05; DFW 11-2005(Temp), f. & cert. ef. 3-2-05, cert. ef. 3-3-05 & 7-31-05; DFW 13-2005(Temp), f. & cert. ef. 3-7-05 thru 7-31-05; DFW 14-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; DFW 20-2005(Temp), f. & cert. ef. 3-29-05 thru 3-30-05; DFW 21-2005(Temp), f. & cert. ef. 3-31-05 thru 4-1-05; Administrative correction, 4-20-05; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 7-2006(Temp), f. & cert. ef. 2-23-06 thru 7-31-06; DFW 9-2006(Temp), f. & cert. ef. 3-1-06, cert. ef. 3-2-06 thru 7-31-06; DFW 10-2006(Temp), f. & cert. ef. 3-6-06, cert. ef. 3-7-06 thru 7-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; DFW 12-2006(Temp), f. & cert. ef. 3-14-06 thru 7-31-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 30-2006(Temp), f. & cert. ef. 5-18-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; Administrative correction 8-22-06; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 17-2007(Temp), f. & cert. ef. 3-20-07 thru 9-15-07; DFW 19-2007(Temp), f. & cert. ef. 3-22-07 thru 9-17-07; DFW 44-2007(Temp), f. & cert. ef. 6-14-07 thru 9-17-07; Administrative correction 9-18-07; DFW 31-2008(Temp), f. & cert. ef. 4-1-08 thru 9-27-08; DFW 33-2008(Temp), f. & cert. ef. 4-7-08, cert. ef. 4-8-08 thru 9-27-08; DFW 34-2008(Temp), f. & cert. ef. 4-15-08 thru 9-27-08

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**Department of Human Services,
Addictions and Mental Health Division:
Mental Health Services
Chapter 309**

Rule Caption: Establishment of a Hearing Process for Patients and Residents Prior to Administration of Significant Procedures.

Adm. Order No.: MHS 2-2008(Temp)

Filed with Sec. of State: 4-7-2008

Certified to be Effective: 4-7-08 thru 10-4-08

Notice Publication Date:

Rules Adopted: 309-114-0030

Rules Amended: 309-114-0000, 309-114-0005, 309-114-0010, 309-114-0015, 309-114-0020, 309-114-0025

Rules Suspended: 309-114-0000(T), 309-114-0005(T), 309-114-0010(T), 309-114-0015(T), 309-114-0020(T), 309-114-0025(T)

Subject: The Addictions and Mental Health Division of the Department of Human Services is temporarily amending OAR 309-114-0000 through 309-114-0025, 309-118-0015 & 309-031-0215 and temporarily adopting OAR 309-114-0030 to modify the hearing process for patients and residents prior to the administration of "significant procedures," as defined in OAR 309-114-0005.

Rules Coordinator: Richard Luthe—(503) 947-1186

309-114-0000

Purpose and Statutory Authority

Purpose. These rules prescribe standards and procedures to be observed by personnel of state institutions operated by Addictions and Mental Health Division or the Seniors and People With Disabilities Division in obtaining informed consent to significant procedures, as defined by these rules, from patients and residents of such state institutions. These rules do not apply to routine medical procedures. Administration of significant procedures without informed consent is permitted in emergencies under OAR 309-114-0015. The purpose of these rules is to assure that

the rights of patients and residents are protected with respect to significant procedures.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255

Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08

309-114-0005

Definitions

As used in these rules:

(1) "Chief Medical Officer" means the physician designated by the superintendent of each state institution pursuant to ORS 179.360(1)(f) who is responsible for the administration of medical treatment at each state institution.

(2) "Division," as used in these rules means these Divisions of the Department of Human Services:

(a) Addictions and Mental Health Division (AMH) when referring to "patients;" and

(b) The Seniors and People with Disabilities Division (SPD) when referring to "residents."

(3) "Guardian" means a legal guardian who is a person appointed by a court of law to act as guardian of a minor or a legally incapacitated person.

(4) "Certified Law Student" means an eligible law student certified by the Oregon State Bar to appear in court or in an administrative proceeding and is supervised by an attorney licensed by the Oregon State Bar.

(5) "Legally Incapacitated" means having been found by a court of law under ORS 426.295 to be unable, without assistance, to properly manage or take care of one's personal affairs.

(6) "Material Risk." A risk is material if it may have a substantial adverse effect on the patient's or resident's psychological and/or physical health. Tardive dyskinesia is a material risk of neuroleptic medication. Other risks include, but are not limited to, raised blood pressure, onset of diabetes, and metabolic changes.

(7) "Medication Educator" means a Qualified Mental Health Professional (QMHP) or Qualified Mental Retardation Professional who provides information about the proposed significant procedures to patients and residents.

(8) "Patient" means a person who is receiving care and treatment in a state institution for the mentally ill.

(9) "Person Committed to the Division" or "Person" means a patient or resident committed under ORS 161.327, 161.370, 179.478, 426.130, or 427.215, or certified by the State Training Center Review Board under ORS 427.020.

(10) "Qualified Mental Health Professional" (QMHP) means any person meeting the following minimum qualifications as documented by the state institution:

(a) Graduate degree in psychology;

(b) Bachelor's or graduate degree in nursing and licensed by the State of Oregon;

(c) Graduate degree in social work or counseling;

(d) Graduate degree in a behavioral science field;

(e) Graduate degree in recreational art, or music therapy;

(f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; or

(g) Bachelor's or graduate degree in a relevant area.

(11) "Qualified Mental Retardation Professional" means a person who meets the professional requirements under 42 CFR 483.430.

(12) "Resident" means a person who is receiving care, treatment, and training in a state institution for the mentally retarded.

(13) "Representative" is an individual allowed to represent a party or the agency in an administrative hearing under Oregon law.

(14) "Routine Medical Procedure" means a procedure customarily administered by facility medical staff under circumstances involving little or no risk of causing injury to a patient or resident, including, but not limited to physical examinations, blood draws, tuberculosis (TB) testing, and hygiene.

(15) "Significant Procedure" means a diagnostic or treatment modality, and all significant procedures of a similar class, that pose a material risk of substantial pain or harm to the patient or resident such as, but not limited to, psychotropic medication and electro-convulsive therapy. Significant procedures do not include routine medical procedures.

(16) "Significant Procedures of a Similar Class" means a diagnostic or treatment modality that presents substantially similar material risks as the significant procedure listed on the treating physician's informed consent form and is generally considered in current clinical practice to be a substi-

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tute treatment or belong to the same class of medications as the listed significant procedure. Significant procedures of a similar class do not need to be specifically listed on the treating physician's form.

(17) "State Institution" means all Oregon State Hospital campuses, Blue Mountain Recovery Center and Eastern Oregon Training Center.

(18) "Superintendent" means the executive head of the state institution listed in section

(17) Of this rule, or the superintendent's designee.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255

Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08

309-114-0010

General Policy on Obtaining Informed Consent to Treatment and Training

(1) Basic Rule. Patients and residents, or parents or guardians of minors, or guardians on behalf of legally incapacitated patients and residents, may refuse any significant procedure and may withdraw at any time consent previously given to a significant procedure. Any refusal or withdrawal or withholding of consent shall be documented in the patient's or resident's record.

(a) Personnel of a state institution shall not administer a significant procedure to a patient or resident unless written informed consent is obtained from or on behalf of the patient or resident in the manner prescribed in these rules, except as follows:

(A) Administration of significant procedures to legally incapacitated patients or residents as provided in section (6) of this rule;

(B) Administration of significant procedures without informed consent in emergencies under OAR 309-114-0015; and

(C) Involuntary administration of significant procedures with good cause to persons committed to the division under OAR 309-114-0020.

(b) In no case may personnel of a state institution for the mentally retarded administer a procedure using aversive stimuli to a resident without the consent of a parent or legal guardian.

(2) Capacity of patient or resident: In order to consent to, or refuse, withhold, or withdraw consent to significant procedures, the patient or resident must have the capacity to make a decision concerning acceptance or rejection of a significant procedure, as follows:

(a) Unless adjudicated legally incapacitated for all purposes or for the specific purpose of making treatment decisions, a patient or resident shall be presumed competent to consent to, or refuse, withhold, or withdraw consent to significant procedures. A person committed to the Division may be deemed unable to consent to or refuse, withhold, or withdraw consent to a significant procedure only if the person currently demonstrates an inability to comprehend and weigh the risks and benefits of the proposed procedure, alternative procedures, or no treatment at all or other information disclosed pursuant to subsections (3)(a) of this rule. The patient's current inability to provide informed consent is to be documented in the patient's record and supported by the patient's statements or behavior; and may be evidenced in the treating physician's informed consent form, the evaluation form by the independent examining physician, review by disposition boards in the case of a resident, and forms approving or disapproving the procedure by the superintendent or chief medical officer;

(b) A person committed to the Division shall not be deemed unable to consent to or refuse, withhold, or withdraw consent to a significant procedure merely by reason of one or more of the following facts:

(A) The person has been involuntarily committed to the Division;

(B) The person has been diagnosed as mentally ill or mentally retarded;

(C) The person has disagreed or now disagrees with the treating physician's or certified nurse practitioner's diagnosis;

(D) The person has disagreed or now disagrees with the treating physician's or certified nurse practitioner's recommendation regarding treatment.

(c) If a court has determined that a patient or resident is legally incapacitated, then consent shall be sought from the legal guardian.

(3) Procedures for Obtaining Informed Consent and Information to be Given: The person from whom informed consent to a significant procedure is sought shall be given information, orally and in writing, the substance of which is to be found on the treating physician's informed consent form. In the case of medication, there shall be attached a preprinted patient information sheet on the risks and benefits of the medication listed on the treating physician's form. Specific information about significant procedures of a similar class will not be provided to or discussed with the patient or resident.

(a) The information shall describe:

(A) The nature and seriousness of the patient's or resident's mental illness or condition;

(B) The purpose of the significant procedures listed on the treating physician's form, the intended outcome and the risks and benefits of the procedures;

(C) Any alternatives, particularly alternatives offering less material risks to the proposed significant procedure that are reasonably available and reasonably comparable in effectiveness;

(D) If the proposed significant procedure is medication, facility medical staff shall give the name, dosage range, and frequency of administration of the medication listed on the treating physician's form, and shall explain the material risks of the medication at that dosage range.

(E) The side effects of the intended medication or electro-convulsive therapy;

(F) The predicted medical, psychiatric, social, or legal consequences of not accepting the significant procedure or any comparable procedure, including any potential risk the patient or resident represents to the health and safety of himself or others if he or she does not receive the significant procedure;

(G) That consent may be refused, withheld or withdrawn at any time; and

(H) Any additional information concerning the proposed significant procedure requested by the patient or resident.

(b) A medication educator shall assist by providing information to the patient or resident that explains the proposed significant procedure, as described in section (3)(a) of this rule;

(c) The treating physician intending to administer a significant procedure shall document in the patient's or resident's chart that the information required in subsections (3)(a) of this rule was explained and that the patient, resident, parent or guardian of a minor or guardian of a legally incapacitated patient or resident explicitly consented, refused, withheld or withdrew consent. The treating physician may document this by completing the informed consent form and make it part of the patient's record.

(4) When discussing the significant procedure with the treating physician and the medication educator, the patient or resident may request additional information about the significant procedure pursuant to OAR 309-114-0010(3)(a)(H) and present additional information relevant to making his or her decision.

(5) Voluntary Consent: Consent to a proposed significant procedure must be given voluntarily, free of any duress or coercion. Subject to the provisions of OAR 309-114-0020, the decision to refuse, withhold or withdraw consent previously given shall not result in the denial of any other benefit, privilege, or service solely on the basis of refusing, withholding or withdrawing consent. A voluntary patient or resident may be discharged from the institution if offered procedures are refused.

(6) Obtaining Consent with Respect to Legally Incapacitated Patients and Residents: A state institution may not administer a significant procedure to a legally incapacitated patient or resident without the consent of the guardian, or, in the case of a minor, the parent or guardian, except in the case of an emergency under OAR 309-114-0015 or where the institution has good cause to involuntarily administer a significant procedure under OAR 309-114-0020. In order to prove good cause, the hospital must prove OAR 309-114-0020(1)(a) and (1)(d) in reference to the guardian and OAR 309-114-0020(1)(b) and (1)(c) in reference to the patient.

(7) Reports of Progress: A patient or resident, the parents or guardian of a minor patient or resident, or the guardian of a legally incapacitated patient or resident shall, upon request, be informed of the progress of the patient or resident during administration of the significant procedure.

(8) These rules will be effective as of December 1, 2007 on all new orders for administration of significant procedures without informed consent. This includes new orders written after expiration of the previous order. This rule will be effective for existing, unexpired orders as of January 1, 2008, on a phased-in schedule that will accommodate as many new hearings as is practicable to schedule each week.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255

Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08

309-114-0015

Administration of Significant Procedures Without Informed Consent in Emergencies

(1) An emergency exists if in the opinion of the chief medical officer or designee:

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(a) Immediate action is required to preserve the life or physical health of the patient or resident and it is impracticable to obtain informed consent as provided in OAR 309-114-0010; or

(b) Immediate action is required because the behavior of the patient or resident creates a substantial likelihood of immediate physical harm to the patient, resident, or others in the institution and it is impracticable to obtain informed consent as provided in OAR 309-114-0010.

(2) If an emergency exists, the chief medical officer or designee may administer a significant procedure to a patient or resident without obtaining prior informed consent in the manner otherwise required by these rules provided:

(a) The specific nature of each emergency and the procedure which was used to deal with the emergency are adequately documented in the patient's or resident's record and a form provided for emergency procedure is completed and placed in the patient's or resident's record;

(b) Reasonable effort shall be made to contact the parent or legal guardian prior to the administration of the significant procedure. If contact is not possible, notice shall be given to the parent or legal guardian as soon as possible;

(c) Within a reasonable period of time after an emergency procedure is administered, the treatment team shall review the treatment or training program and, if practicable, implement a treatment or training program designed to correct the behavior creating the emergency;

(d) The administration of a significant procedure in an emergency situation does not allow the institution to administer these procedures, once the emergency has subsided, without obtaining informed consent.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255

Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08

309-114-0020

Involuntary Administration of Significant Procedures to Persons Committed to the Division with Good Cause

(1) Good cause: Good cause exists to administer a significant procedure to a person committed to the Division without informed consent if in the opinion of the treating physician or certified nurse practitioner after consultation with the treatment team the following four factors are satisfied:

(a) Pursuant to OAR 309-114-0010(2), the person is deemed unable to consent to, refuse, withhold or withdraw consent to the significant procedure. This determination must be documented in the treating physician's informed consent form and the independent examining physician's evaluation form, and include the specific questions asked and answers given regarding the patient's ability to weigh the risks and benefits of the proposed treatment, alternative treatment, and no treatment.

(b) The proposed significant procedure will likely restore, or prevent deterioration of, the person's mental or physical health; alleviate extreme suffering; or save or extend the person's life. This factor is established conclusively for purposes of a hearing under OAR 309-114-0025 by introducing into evidence the treating physician's informed consent form and the independent examining physician's evaluation form, unless this factor is affirmatively raised as an issue by the patient or resident or his/her representative at the hearing.

(c) The proposed significant procedure is the most appropriate treatment for the person's condition according to current clinical practice, and all other less intrusive procedures have been considered and all criteria and information set forth in OAR 309-114-0010(3)(a) were considered. This factor is established conclusively for purposes of a hearing under OAR 309-114-0025 by introducing into evidence the treating physician's informed consent form and the independent examining physician's evaluation form, unless this factor is affirmatively raised as an issue by the patient or resident or his/her representative at the hearing.

(d) The institution made a conscientious effort to obtain informed consent from the patient. This factor is established conclusively for purposes of a hearing under OAR 309-114-0025 by introducing into evidence the treating physician's informed consent form and the medication educator's form/progress note, unless this factor is affirmatively raised as an issue by the patient or resident or his/her representative at the hearing. A "conscientious effort" to obtain informed consent means the following:

(A) The patient's or resident's treating physician made at least two good faith attempts to obtain informed consent by attempting to explain the procedure to the patient or resident and documenting those efforts in the patient's or resident's record; and

(B) The medication educator made at least one good faith attempt to provide the information required in OAR 309-114-0010(3)(a), and explain and discuss the proposed procedure with the patient or resident.

(2) Independent Review: Prior to granting approval for the administration of a significant procedure for good cause to a person committed to the Division, the superintendent or chief medical officer of a state institution for the mentally ill shall obtain consultation and approval from an independent examining physician. The superintendent or chief medical officer shall maintain a list of independent examining physicians and shall seek consultation and approval from independent examining physicians selected on a rotating basis from the list. The independent examining physician shall not be an employee of the Division, shall be a board-eligible psychiatrist, shall have been subjected to review by the medical staff executive committee as to qualifications to make such an examination, shall have been provided with a copy of administration rules OAR 309-114-0000 through 309-114-0030, and shall have participated in a training program regarding these rules, their meaning and application.

(3) Prior to granting approval for the administration of a significant procedure for good cause, the superintendent or chief medical officer of a state institution for the mentally retarded shall refer the matter for review to a disposition board convened for such purpose. The disposition board shall have five members: two employees from the state institution not directly involved in the treatment of the resident and three public members. Members of the disposition board shall be provided a copy of administrative rules OAR 309-114-0000 through 309-114-0030 and shall be part of a training program regarding their meaning and application.

(4) The superintendent or chief medical officer shall provide to a patient or resident to whom a significant procedure is proposed to be administered written advance notice of the intent to seek consultation and approval of an independent examining physician or review by a disposition board for the purpose of administering the procedure without the patient's or resident's consent.

(5) The physician selected to conduct the independent consultation or the disposition board shall:

(a) Review the person's medical chart, including the records of efforts made to obtain the person's informed consent, personally examine the person, or, in the case of the disposition board, interview the resident;

(b) Discuss the matter with the person to determine the extent of the need for the procedure and the nature of the person's refusal, withholding, or withdrawal or inability to consent to the significant procedure. This determination must be documented in the patient's or resident's records as well as the supporting evidence in the form of the specific questions asked and answers given regarding the patient's ability to weigh the risks and benefits of the proposed treatment, alternative treatment, and no treatment;

(c) Consider additional information, if any, presented prior to or at the time of examination or interview as may be requested by the person or anyone on behalf of the person;

(d) Make a determination whether the factors required under these rules exist for the particular person or that one or more factors are not present, and complete a report of his or her findings, which provides their approval or disapproval of the proposed significant procedure. The written report must be provided to:

(A) The superintendent or chief medical officer; and

(B) The person to whom a significant procedure is proposed to be administered, with a copy being made part of the person's record.

(6) Superintendent's Determination:

(a) The superintendent or chief medical officer shall approve or disapprove of the administration of the significant procedure to a person committed to the Division based on good cause, provided that if the examining physician or disposition board found that one or more of the factors required by section (1) of this rule were not present or otherwise disapproved of the procedure, the superintendent or chief medical officer shall not approve the significant procedure and it shall not be performed;

(b) Approval of the significant procedure shall be only for as long as no substantial increase in risk is encountered in administering the significant procedure or significant procedure of a similar class during the term of a person's commitment but in no case longer than 180 days. Disapproval shall be only for as long as no substantial change occurs in the person's condition during the term of commitment but in no case longer than 180 days;

(c) Written notice of the superintendent's or chief medical officer's determination shall be provided to the person and made part of the person's record. This notice must be delivered to the patient or resident, and fully explained by facility medical staff. This notice must include a clear statement of the decision to treat without informed consent, specific bases for the decision, state what evidence was relied on to make the decision, and

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include a clear notice of the opportunity to ask for a contested case hearing with an administrative law judge if the patient disagrees with the decision. Attached must be a form with a simple procedure to request a hearing. The patient or resident indicating in writing or verbally to any staff member a desire to challenge the institution's decision will be sufficient to request a contested case hearing pursuant to OAR 309-114-0025. The patient or resident shall have 48 hours to request a contested case hearing after receiving this notice. If the patient or resident does not request a hearing within the 48 hour period or the patient or resident subsequently withdraws his request prior to the hearing and is not already receiving the significant procedure, the institution may involuntarily administer the significant procedure. A patient or resident retains the right to request an initial hearing on the decision to administer a significant procedure without informed consent at any time.

(d) Records of all reports by independent examining physicians or disposition boards and of the determinations of the superintendent or chief medical officer under this rule shall be maintained by the superintendent or chief medical officer in a separate file and shall be summarized each year. Such summaries shall show:

(A) Each type of proposed significant procedure for which consultation with an independent examining physician or review by a disposition board was sought;

(B) The number of times consultation or review was sought from a particular independent examining physician or disposition board for each type of proposed significant procedure;

(C) The number of times each independent examining physician or disposition board approved and disapproved each type of proposed significant procedure; and

(D) The number of times the superintendent or chief medical officer approved and disapproved each type of proposed significant procedure;

(E) Such summaries shall be public records and shall be made available to the public during reasonable business hours in accordance with ORS chapter 192.

(7) When treatment is being administered without informed consent, the ward physician will write a progress note addressing any changes in patient's or resident's capacity to give informed consent every 60 days.

(8) At any time that a patient's or resident's condition changes so that there appears to his or her treating physician to be a substantial improvement in the patient's or resident's capacity to consent to or refuse treatment, a formal re-assessment of the patient's or resident's capacity to consent shall occur, as described in OAR 309-114-0010 and 309-114-0020. No order to administer treatment without informed consent in non-emergency situations shall be valid for longer than 180 days, or the duration of the commitment, whichever is shorter, without re-establishing the need for the order by following the procedures described in OAR 309-114-0010 and 309-114-0020.

(9) When a patient or resident is transferred to a state institution from a community hospital or another state institution where he/she was already being treated with a significant procedure without informed consent, the receiving institution must apply OAR 309-114-0000 through 309-114-0030 no later than 7 days after the date of admission to the new institution. A state institution can honor an existing order for involuntary administration of a significant procedure without informed consent if procedures such as those outlined in OAR 309-114-0010 through 309-114-0030 have already been applied and all necessary documentation is in the patient's file.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255

Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-880, cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08

309-114-0025

Contested Case Hearing

(1) Patient's or Resident's Rights: A patient or resident has the right to contest the hospital's determination that it has good cause to involuntarily administer a significant procedure without informed consent pursuant to OAR 309-114-0020(6)(c). If the patient or resident is a minor or legally incapacitated, the parents or guardian has the right to contest the hospital's determination that it has good cause to involuntarily administer a significant procedure without informed consent pursuant to OAR 309-114-0020(6)(c).

(a) Instructions and a simple method of requesting such a hearing shall be provided to every patient or resident when he or she receives notice that the institution intends to administer a significant procedure without informed consent. The patient or resident indicating in writing or verbally to any staff member a desire to challenge the institution's decision will be sufficient to request a contested case hearing.

(b) A patient or resident's verbal or written request for a hearing implies consent to the release of his or her records and protected health information to his or her representative, the institution's representative, and the Office of Administrative Hearings for the purpose of preparing for and conducting the contested case hearing.

(c) After filing a request for an administrative hearing, an attorney or certified law student will be appointed by the Division to represent any patient or resident who requests one. The patient or resident has the right to be represented at the hearing by a representative appointed and paid by the state. The patient or resident also has the right to be represented at the hearing by an attorney or certified law student of his/her choice and at his/her own expense.

(d) If a patient or resident requests a contested case hearing and is not already receiving the significant procedure pursuant to a valid physician's order the patient or resident has the right to not receive the significant procedure prior to and during the hearing. If the patient or resident is already receiving the significant procedure pursuant to a valid physician's order, the institution may continue to administer the significant procedure to the patient or resident until the final order is issued.

(2) Contested Case Hearing: The administrative hearing will conform to the requirements set forth in ORS 183.413 through 183.500, and the Attorney General's Model Rules at OAR 137-003-0501 and the following:

(a) The hearing must be held within 14 days of the date of the patient's or resident's request, unless the patient or resident or his/her representative or the state institution's representative requests a delay for good cause or the patient or resident or his/her representative and the state institution's representative agree to a postponement. Good cause includes, but is not limited to, the following circumstances: the patient's ward is quarantined at the time of the hearing, additional time is required to access necessary and relevant records not in the possession of the state institution, or titration of the patient's medication is necessary to allow minimally adequate communication by the patient with his or her representative for purposes of the hearing.

(b) These hearings are closed to all non-participants, except personnel from the institution or the Attorney General's Office, personnel from the Oregon Advocacy Center, or members of the patient's family. Any exceptions to this policy must be agreed to in advance by the institution's representative and the patient or resident or his/her representative. The institution may exclude non-participants, otherwise allowed to attend these hearings, who are disruptive or represent a safety concern.

(c) In lieu of discovery, the patient or resident or his/her representative will be provided with the treating physician's form, independent examining physician's evaluation form, the superintendent's or chief medical officer's form approving or disapproving of the administration of the significant procedure, and the preprinted patient information regarding the risks and benefits of the proposed significant procedures. The patient or resident or his/her representative may also review the patient's chart and consult with the patient's treating physician.

(d) The following procedures are not available in these contested case hearings: summary determination procedures as defined in OAR 137-003-580, pre-hearing motions as defined in OAR 137-003-0630, and pre-determination review procedures in OAR 137-003-0640.

(e) A proposed written order must be issued by the administrative law judge within two days after the hearing, except when the administrative law judge determines that there is good cause to delay the order. All proposed orders must be issued within 3 days of the close of the hearing or the record, whichever is later, excluding weekends and holidays.

(f) If after the hearing, the administrative law judge determines that there is an issue not raised by a party or the agency that impacts the outcome of the case, the administrative law judge must grant a continuance for good cause and inform the institution's representative and the patient or resident or his/her representative so that they may present additional arguments and evidence on that issue.

(g) The administrative law judge must determine whether to affirm or reverse the state institution's decision that it has good cause to involuntarily administer a significant procedure without informed consent from the patient or resident as defined by the four factors in OAR 309-114-0020(1) with regards to the significant procedures listed on the treating physician's informed consent form.

(h) If the ALJ issues a proposed order, and the proposed order is adverse to a party, the party may file exceptions or written argument to the proposed order to be considered by the institution. The exceptions must be in writing and reach the institution not later than two days (excluding weekends and holidays) after the date of the proposed order is issued by the ALJ. No additional evidence may be submitted without prior approval of the

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institution. After receiving and considering the exceptions or argument, if any, the institution may adopt the proposed order as the final order or may prepare a new order to be issued within 2 days (excluding weekends and holidays) from receipt of the exception or argument. A final order is effective immediately upon being signed or as otherwise provided in the order.

(i) A final order affirming or reversing the institution's decision to involuntarily administer a significant procedure to the patient or resident without informed consent includes all significant procedures listed on the treating physician's informed consent form and all unlisted significant procedures of a similar class.

(j) A final order approving the involuntary administration of the significant procedure without informed consent shall be reexamined if the treating physician determines that there is a substantial increase in the risk to the patient or resident in administering the significant procedure during the term of a person's commitment, but in no case longer than 180 days. Approval of the significant procedure may also be reexamined pursuant to OAR 309-114-0020(8) if the treating physician determines that there is substantial improvement in the patient's or resident's capacity.

(k) A final order disapproving the involuntary administration of the significant procedure without informed consent lasts for no longer than 180 days. If a substantial change in the patient's or resident's condition occurs during this time, the institution may re-evaluate the patient or resident using the entire OAR 309-114-0020 process, and must additionally document and explain what substantial change in the person's capacity has occurred since the administrative law judge decision was issued.

(l) If the final order reverses the institution's decision to involuntarily administer a significant procedure and the patient or resident is already receiving the significant procedure, then the hospital may continue to administer the significant procedure to the extent it is necessary to develop and implement a titration plan to safely discontinue the significant procedure according to current clinical practice.

(m) Any administrative law judge who will preside over a hearing regarding involuntary administration of a significant procedure without informed consent must complete agency approved training unique to administration of psychiatric treatment without consent. This training shall be developed by the Division in consultation with the Oregon Advocacy Center.

Stat. Auth.: ORS 179.040
Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255
Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08

309-114-0030

Notice to Patients, Residents, and Employees

(1) Upon a patient's or resident's admission, the state institutions shall inform the patient and resident, orally and in writing, of the rights, policies, and procedures set forth in these rules. In addition, a clear and simple summary of the contents, including the title, number, and purpose of these rules, and instructions on how to obtain a copy of the rules and advice about their content shall be prominently displayed in areas frequented by patients and residents in all state institutions.

(2) All employees of state institutions involved in patient or resident care shall be notified in writing at the commencement of his or her employment, or, for present employees, within a reasonable time after the effective date of these rules, of the rights, policies, and procedures set forth in these rules. These employees shall participate in a training program regarding the rules, their meaning and application.

Stat. Auth.: ORS 179.040
Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255
Hist.: MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08

Rule Caption: Adopt a rule allowing variances to the "Alternatives to State Hospitalization...for Children" rules.

Adm. Order No.: MHS 3-2008

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 4-15-08

Notice Publication Date: 3-1-2008

Rules Adopted: 309-032-1095

Subject: The Addictions and Mental Health (AMH) Division is adopting a rule to allow the Division to grant variances to the "Alternatives to State Hospitalization Standards for Community Treatment Services for Children" rules.

Rules Coordinator: Richard Luthe—(503) 947-1186

309-032-1095

Variances

(1) Criteria for a variance. Variances may be granted to a CMHP or provider if there is a lack of resources to implement the standards required in this rule or if implementation of the proposed alternative services, methods, concepts or procedures would result in services or systems that meet or exceed the standards in these rules.

(a) CMHP's and other providers may submit their variance request directly with the Division; and

(b) Providers, who hold Certificates of Approval jointly with CMHP's and the Division, shall submit their variance requests to the CMHP's. The CMHP may then submit the variance request, along with the CMHP's written support of the variance, to the Division.

(2) Variance application. The CMHP or provider requesting a variance shall submit, in writing, an application to the Deputy Assistant Director of the Division or designee, which 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

(3) Division review. The Deputy Assistant Director shall approve or deny the request for a variance.

(4) Notification. The Division shall notify the CMHP and/or provider in writing of the decision to approve or deny the requested variance. The written notification shall include the specific alternative practice, service, method, concept or procedure that is approved and the duration of the approval.

(5) Appeal application. Appeal of the denial of a variance request shall be made in writing to the Assistant Director of the Division, whose decision shall be final.

(6) Written approval. The CMHP or provider may implement a variance only after written approval from the Division.

(7) Duration of variance. It is the responsibility of the CMHP or the provider to submit a request to extend a variance in writing prior to a variance expiring. A variance may be reissued through written application for a variance from the CMHP or provider, as described above, and upon written approval by the Division.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010 & 430.630
Hist.: MHS 3-2008, f. & cert. ef. 4-15-08

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

Rule Caption: Criminal history checks for certain subject individuals; spousal home care workers added, voluntary informal appeal.

Adm. Order No.: DHSD 2-2008(Temp)

Filed with Sec. of State: 3-31-2008

Certified to be Effective: 3-31-08 thru 9-26-08

Notice Publication Date:

Rules Adopted: 407-007-0000, 407-007-0010, 407-007-0020, 407-007-0030, 407-007-0040, 407-007-0050, 407-007-0060, 407-007-0070, 407-007-0080, 407-007-0090

Rules Amended: 407-007-0210, 407-007-0270, 407-007-0330

Subject: The Department of Human Services (DHS) currently conducts criminal history checks for all its employees, applicants or persons offered employment, volunteers, contractors, and most providers under OAR 407-007-0200 through 407-007-0380. DHS employees, volunteers under its direction and control, and certain contractors such as those working through DHS' Office of Information Services have potentially broader risk to DHS, DHS clients, and vulnerable persons, than do providers throughout Oregon. DHS employees also have different criminal history check and appeal conditions under collective bargaining agreements. Therefore, DHS is adopting new rules, OAR 407-007-0000 through 407-007-0090, specifically written for all its employees, applicants or persons offered employment, volunteers under DHS direction and control, and certain contractors.

OAR 407-007-0210, 407-007-0270, and 407-007-0330 are being amended to remove reference to subject individuals now covered by

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the newly adopted rules. OAR 407-007-0210 is being amended to correct a conflict with Seniors and People with Disabilities Division rules by removing the exclusion of spousal home care workers as subject individuals. OAR 407-007-0330 is being amended to remove the mandatory nature of informal administrative reviews. According to the Oregon Attorney General, a subject individual's right to hearing cannot be terminated due to failure to participate in the informal administrative review.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-007-0000

Purpose and Scope

(1) Purpose. The purpose of these rules, OAR 407-007-0000 through 407-007-0090, is to provide for the screening under ORS 181.534 and 181.537 of the Department of Human Services' (Department) employees, volunteers, and contractors to determine if they have a history of criminal behavior such that they should not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules.

(2) Rule Applicability. These rules do not apply to subject individuals covered under OAR 407-007-0200 through 407-007-0380.

Stat. Auth.: ORS 181.534, 181.537, 409.050, 678.153
Stats. Implemented: ORS 181.534, 181.537, 678.153, 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08

407-007-0010

Definitions

As used in OAR 407-007-0000 through 407-007-0090, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Approved" means that a subject individual, following a final fitness determination, is eligible to work, volunteer, be employed, or otherwise perform in positions covered by these rules.

(2) "Client" means any individual who receives services, care, or funding for care, through the Department.

(3) "Closed" or "Closed Case" means a criminal history check application for which a final fitness determination has not been completed.

(4) "Criminal History Check" means obtaining and reviewing criminal history as required by these rules. The result of a criminal history check is a fitness determination or a closed case. The criminal history check includes any or all of the following:

(a) An Oregon criminal history check, in which criminal offender information is obtained from Oregon Department of State Police (OSP) using the Law Enforcement Data System (LEDS). The Oregon criminal history check may also include a review of information from the Oregon Judicial Information Network (OJIN), Oregon Department of Corrections records, Oregon Department of Transportation Drivers and Motor Vehicles Division (DMV), local or regional criminal history information systems, or other official law enforcement agency or court records in Oregon.

(b) A national criminal history check, in which criminal history is obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint cards and other identifying information.

(c) A state-specific criminal history check, in which criminal history is obtained from law enforcement agencies, courts or other criminal history information resources located in, or regarding, a state or jurisdiction outside Oregon.

(5) "Criminal Offender Information" means records, including fingerprints and photographs, received, compiled, and disseminated by OSP for purposes of identifying criminal offenders and alleged offenders and maintained as part of an individual's records of arrest, the nature and disposition of criminal charges, sentencing, confinement (confinement shall not include the retention by OSP of records of transfer of inmates between penal institutions or other correctional facilities), and release, and includes the OSP computerized criminal history system.

(6) "Criminal Records Unit (CRU)" means the Department's Criminal Records Unit.

(7) "Denied" means that a subject individual, following a fitness determination including a weighing test, is not eligible to work, volunteer, be employed, or otherwise perform in positions covered by these rules.

(8) "Department" means the Department of Human Services (DHS).

(9) "Employee" means an individual working in the Department in any position including a new hire, promotion, demotion, direct appointment, re-employment, job rotation, developmental assignment, transfer, or temporary hire.

(10) "Fitness Determination" means the outcome of an application and preliminary review, or an application and criminal history check

including gathering of other information as necessary, in a case that is not closed.

(11) "Good Cause" means a valid and sufficient reason for not complying with time frames set during the criminal history check process or contested case hearing process, and may include an explanation of circumstances beyond an individual's reasonable control.

(12) "Other Criminal History Information" means information obtained and used in the criminal history check process that is not "criminal offender information" from OSP. "Other criminal history information" includes police investigations and records, justice records, court records, sexual offender registration records, warrants, DMV information, information provided on the Department's criminal history check forms, and any other information from any jurisdiction obtained by or provided to the Department for the purpose of conducting a fitness determination.

(13) "Restricted Approval" means an approval in which some restriction is made including but not limited to the subject individual, the subject individual's environment, the type or number of clients for whom the subject individual may care, or the information to which the subject individual has access.

(14) "Subject Individual" means an individual 16 years old or older from whom the Department may require fingerprints for the purpose of conducting a criminal history check. A subject individual includes any of the following:

(a) An employee of the Department.

(b) An individual who has been offered employment by the Department.

(c) An individual secured by the Department through the services of a temporary employment agency, staffing agency, or personnel services agency who is providing any of the duties or having access as described in OAR 407-007-0060(1)(c).

(d) A volunteer or student over whom the Department has direction and control.

(e) A Department client who is placed in the work experience program at a Department site.

(f) Any individual who is required to complete a criminal history check pursuant to ORS 181.534 and 181.537 or the authority of these rules pursuant to a contract with the Department.

(g) Any individual applying for a paid or volunteer position, any employee, any volunteer, any contractor, or any employee of any contractor in a secure residential treatment facility, a state-operated rehabilitation facility, a state-operated group home within the Department's State Operated Community Programs, Blue Mountain Recovery Center, Eastern Oregon Training Center, or Oregon State Hospital.

(15) "Weighing Test" means a process carried out by the Department in which available information is considered to make the outcome of a preliminary or final fitness determination. A weighing test is only conducted when a subject individual has potentially disqualifying crimes or conditions.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08

407-007-0020

Criminal History Check Required

(1) Who Conducts Criminal History Check.

(a) The Department. The Department conducts criminal history checks on all subject individuals through LEDS maintained by OSP pursuant to ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(b) OSP. If a nationwide criminal records check of a subject individual is necessary, OSP shall provide the Department results of a criminal records check conducted pursuant to ORS 181.534, including fingerprint identification, through the FBI.

(2) When Criminal History Check Is Required (New Checks and Re-checks). A subject individual is required to have a check in the following circumstances:

(a) Subject Individuals. An individual becomes a subject individual on or after the effective date of these rules.

(b) Position Change. Except as provided in section (3) of this rule, the individual, whether previously considered a subject individual or not, changes positions, and the position requires a criminal history check. Movement into a position may be due but not limited to promotion, transfer, demotion, re-employment, job rotation, developmental assignment, restoration, bumping, or recall.

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(c) Check Required by Regulation or Contract. A criminal history check is required by federal or state laws or regulations, other rules adopted by the Department, or by contract with the Department.

(d) Check is Justified. The Department has reason to believe that a criminal history check is justified. Examples include but are not limited to any indication of possible criminal behavior or quality assurance monitoring of a previously conducted criminal history check.

(3) When Criminal History Check Is Not Required.

(a) Initial Review. The Department may determine that the completion of a new criminal history check for a Department employee is not required after the completion of the DHS Criminal History Request form when:

(A) The subject individual who has been offered a new position has completed a previous criminal history check with an outcome of approved; and

(B) There has been no break in employment with the Department.

(b) Criteria for Ending Check. The criminal history check process may be ended without a new criminal history check or new fitness determination if the Department determines there is no indication of new potentially disqualifying crimes or conditions, and at least one of the following is true:

(A) The previous criminal history check identified no potentially disqualifying crimes or conditions as defined at that time and the Department determines that the previous fitness determination is sufficient for the new position.

(B) The Department determines that the new position requires the same or less responsibility or access in the duties as described in OAR 407-007-0060(1)(c).

(4) Reporting Criminal Activity Required. All subject individuals shall notify the Department's Office of Human Resources within five days of being arrested, charged, or convicted of any crime.

Stat. Auth.: ORS 181.534, 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537

Hist.: DHS 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08

407-007-0030

Criminal History Check Process

(1) Department Access. Only Department employees may be authorized and approved to receive and evaluate criminal offender information and other criminal history information. These employees are called authorized designees. Only authorized designees may conduct fitness determinations.

(2) Forms Required. The subject individual shall use the Department's form to request the criminal history check. The DHS Criminal History Request form shall include the following:

(a) Identifying Information. Indication of what identifying information and other information the subject individual is required to provide in order to begin the criminal history check process, including but not limited to name, aliases, date of birth, address, recent residency information, drivers license, disclosure of criminal history, and disclosure of other information to be considered in the event of a weighing test;

(b) Notice Regarding Social Security number. A notice regarding disclosure of Social Security number indicating that:

(A) The subject individual's disclosure is voluntary; and

(B) The Department requests the Social Security number solely for the purpose of positively identifying the subject individual during the criminal history check process.

(c) Fingerprinting. A notice that the subject individual is subject to fingerprinting and a criminal history check; and

(d) Change of Address. Direction to the subject individual to provide the Department with any change of address.

(3) Positive Identification. The Department shall verify the identity of a subject individual which may include but is not limited to asking the subject individual for government-issued photo identification (example: driver's license) and confirming the information on the photo identification with the subject individual, the information written on the DHS Criminal History Request form, and the information written on the fingerprint card if a national criminal history check is conducted.

(4) Oregon Criminal History Check.

(a) Obtaining information. Using information submitted on the DHS Criminal History Request form, the Department obtains criminal offender information from the LEDS system and requests other criminal history information as needed.

(b) Handling of information. Criminal offender information obtained through LEDS shall be handled in accordance with applicable OSP require-

ments in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(5) National Criminal History Check.

(a) Fingerprints Required. In addition to an Oregon criminal history check, a fingerprint-based national criminal history check is required by the Department under any of the following circumstances:

(A) The subject individual has out of state residency evidenced by the subject individual's possession of an out of state drivers' license or living outside Oregon for 60 or more consecutive days during the previous three years.

(B) The LEDS check, subject individual disclosures or any other criminal history information obtained by the Department indicates there may be criminal history outside of Oregon.

(C) The Department has reason to question the identity or history of the subject individual.

(D) The subject individual is subject to these rules due to employment or position at Oregon state institutions under OAR 407-007-0010(14)(g).

(E) The subject individual is assigned duties involving any aspect of a criminal history check process or is a hearings representative in criminal history check contested cases.

(F) A fingerprint-based criminal history check is required by federal or state laws or regulations, other rules adopted by the Department, or by contract with the Department.

(b) Fingerprints May Be Required. In addition to an Oregon criminal history check, the Department may require a fingerprint-based national criminal history check if the Department has reason to believe that fingerprints are needed to make a final fitness determination.

(c) Processing of Fingerprint Card. The subject individual shall complete and submit a fingerprint card when requested by the Department.

(A) The subject individual shall use a fingerprint card (example: FBI Form FD 258) provided by the Department. The Department shall give the subject individual notice regarding the Social Security number as set forth in OAR 407-007-0030.

(B) The subject individual shall submit the card within 21 days of the request to the Department's Criminal Records Unit.

(i) If the card is not received within 21 days, the Department will close the application.

(ii) The Department may extend the time allowed for good cause.

(C) The Department may require new fingerprint cards if previous cards are rejected by OSP or the FBI.

(6) State-Specific Criminal History Check. The Department may also conduct a state-specific criminal history check in lieu of or in addition to a national criminal history check. Reasons for a state-specific criminal history check include but are not limited to:

(a) Out-of-State History. When the Department has reason to believe that out-of-state criminal history may exist.

(b) Illegible Fingerprints. When the Department has been unable to complete a national criminal history check due to illegible fingerprints.

(c) Incomplete Information. When the national criminal history check results show criminal history without final disposition or complete information about charges.

(d) State Not Included in FBI. When there is indication of residency or criminal history in a state that does not submit all criminal history to the FBI.

(e) Other Reasons. When, based on available information, the Department has reason to believe that a state-specific check is necessary.

(7) Additional Information Required.

(a) Required from Subject Individual. In order to complete a criminal history check and fitness determination, the Department may require additional information from the subject individual as necessary such as but not limited to additional criminal, judicial, or other background information; or proof of identity.

(b) Investigatory Interview. If a subject individual who is a represented Department employee is required to provide additional information, the process for obtaining that information through investigatory interviews shall adhere to collective bargaining agreements on investigatory interviews.

(8) Imminent Danger.

(a) New Criminal History Check. If the Department determines there is indication of criminal behavior by the subject individual that could pose a potential immediate risk to the Department, its clients or vulnerable persons, the Department shall authorize a criminal history check without the completion of a DHS Criminal History Request form.

(b) Opportunity to Disclose. If the Department determines that a fitness determination based on the criminal history check would be adverse to

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the subject individual, the Department shall provide the subject individual the opportunity to disclose criminal history and other information as indicated in OAR 407-007-0060 before the completion of the fitness determination.

(9) Documentation. Criminal history checks conducted under this rule shall be documented in writing.

Stat. Auth.: ORS 181.534, 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537

Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08

407-007-0040

Potentially Disqualifying Crimes

(1) Felonies and Misdemeanors. A conviction of any of the following crimes is potentially disqualifying. The list includes offenses that are crimes and does not include offenses or convictions that are classified as violations (see ORS 161.505 through 161.565).

(a) Any Federal Crime.

(b) Any U.S. Military Crime.

(c) Felonies and Misdemeanors in Oregon. Any felony or misdemeanor in Oregon Revised Statutes.

(d) Crimes Outside Oregon. Any felony or misdemeanor in a jurisdiction outside Oregon (including known crimes outside the United States) that is the substantial equivalent of any Oregon crime, or that is serious and demonstrates behavior that poses a threat or jeopardizes the safety of the Department, its clients, or vulnerable individuals as determined by the Department.

(e) Repealed Crimes. Any crime that is no longer codified in Oregon or other jurisdiction but that is the substantial equivalent of any crime listed in this section as determined by the Department.

(2) Evaluation Based on Current Laws. Regardless of the conviction date, evaluations of crimes may be based on Oregon laws and laws in other jurisdictions in effect at the time of the fitness determination.

(3) Juvenile Records. Under no circumstances may a subject individual be denied under these rules because of a juvenile record that has been expunged or set aside pursuant to ORS 419A.260 through 419A.262.

(4) Adult Records. Under no circumstances may a subject individual be denied under these rules because of an adult record that has been set aside pursuant to ORS 137.225.

Stat. Auth.: ORS 181.534, 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537

Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08

407-007-0050

Other Potentially Disqualifying Conditions

The following are potentially disqualifying conditions:

(1) Sex Offender. The subject individual is a registered sex offender in any jurisdiction. There is a rebuttable presumption that an individual is likely to engage in conduct that would pose a significant risk to the Department, its clients, or vulnerable individuals if the subject individual has been designated a predatory sex offender as provided in ORS 181.585 or found to be a sexually violent dangerous offender under ORS 144.635 (or similar statutes in other jurisdictions).

(2) Warrants. The subject individual has an outstanding warrant.

(3) Probation, Parole, or Post-Prison Supervision. The subject individual is currently on probation, parole, or post-prison supervision for any crime, regardless of the original conviction date, as of the date the DHS Criminal History Request form was signed or the date the Department conducted a criminal history check due to imminent danger.

(4) Parole or Probation Violation. The subject individual is found in violation of post-prison supervision, parole, or probation for any crime regardless of the original conviction date, within five years or less from the date the DHS Criminal History Request form was signed or the date the Department conducted a criminal history check due to imminent danger.

(5) Juvenile Adjudication. Adjudication in a juvenile court, finding that the subject individual was responsible for a potentially disqualifying crime that would result in a conviction if committed by an adult.

(6) Guilty Except For Insanity. A finding of "guilty except for insanity," "guilty except by reason of insanity," "not guilty by reason of insanity," "responsible except for insanity," or similarly worded disposition regarding a potentially disqualifying crime.

Stat. Auth.: ORS 181.534, 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537

Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08

407-007-0060

Information Considered

(1) Consideration of Other Information. If the subject individual has potentially disqualifying crimes or conditions, the Department shall con-

sider any information disclosed by the subject individual or otherwise known when making the fitness determination. This information includes but is not limited to:

(a) Potentially disqualifying crimes or conditions. Circumstances regarding the nature of potentially disqualifying crimes and conditions. These may include but are not limited to:

(A) Age of the subject individual at time of the potentially disqualifying crime or condition.

(B) Details of incidents leading to the charges of potentially disqualifying crimes or resulting in potentially disqualifying conditions.

(C) Facts that support the conviction or other potentially disqualifying condition.

(D) Passage of time since commission of the crime or potentially disqualifying condition.

(E) Consideration of Oregon or federal laws, regulations, or rules covering the position or the Department in regards to the potentially disqualifying crimes or conditions.

(b) Other Circumstances. The Department shall also consider other factors when relevant information is available including but not limited to:

(A) Other information related to criminal activity including charges, arrests, pending indictments, or convictions. Other behavior involving contact with law enforcement may also be reviewed if information is relevant to other criminal history or shows a pattern relevant to criminal history.

(B) Periods of incarceration.

(C) Status of and compliance with parole, post-prison supervision, or probation.

(D) Whether a conviction was set aside and the legal effect of the setting aside the conviction.

(E) Evidence of drug or alcohol issues directly related to criminal activity or potentially disqualifying conditions, including history of use, manufacturing, delivery, treatment, rehabilitation, and relapse.

(F) Evidence of other treatment or rehabilitation related to criminal activity, potentially disqualifying conditions or other factors listed in this rule. This includes but is not limited to assessments, evaluations or risk assessments before or after treatment or rehabilitation.

(G) Likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying conditions, including but not limited to patterns of criminal activity or behavior, or whether the subject individual appears to accept responsibility for past actions, as determined by the Department.

(H) Changes in circumstances subsequent to the criminal activity or disqualifying conditions.

(I) Information from Department protective services investigations pursuant to Chapter 444 Oregon Laws 2007.

(J) Education.

(K) Work history (employee or volunteer).

(L) History regarding licensure, certification, or training for licensure or certification.

(M) Written recommendations from current or past employers.

(N) Indication that criminal history or record has been disclosed to the Department or other employers.

(O) Indication of the subject individual's cooperation, honesty, or the making of a false statement during the criminal history check process.

(c) Relevancy of History to Position. The relevancy of the subject individual's criminal history or potentially disqualifying condition to the paid or volunteer position, or to the environment of the position, shall be considered. Consideration includes the relation between the subject individual's potentially disqualifying crimes or conditions and the following tasks or duties in the position:

(A) Access to or direct contact with Department clients, client property, or client funds.

(B) Access to information technology services, or control over or access to information technology systems that would allow an individual holding the position to harm the information technology systems or the information contained in the systems.

(C) Access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations, or information that is defined as confidential under state or federal laws, rules, or regulations.

(D) Access to payroll functions.

(E) Responsibility for receiving, receipting, or depositing money or negotiable instruments.

(F) Responsibility for billing, collections, or other financial transactions.

(G) Access to mail received or sent to the Department, including interagency mail, or access to any mail facilities in the Department.

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(H) Responsibility for auditing the Department or other governmental agencies.

(I) Responsibility for any personnel or human resources functions.

(J) Access to personal information about employees, clients, or members of the public including Social Security numbers, dates of birth, driver license numbers, residency information, medical information, personal financial information, criminal offender information, or other criminal history information.

(K) Access to medications, chemicals, or hazardous materials or access to facilities in which medications, chemicals and hazardous materials are present or access to information regarding the transportation of medications, chemicals, or hazardous materials.

(L) Access to property to which access is restricted in order to protect the health or safety of the public.

(M) Responsibility for security, design, or construction services. This relates to government buildings, grounds or facilities, or buildings, owned, leased, or rented for government purposes.

(N) Access to critical infrastructure or security-sensitive facilities or information.

(2) Fitness Determination with Available Information. If the Department requests other information for the purpose of conducting a weighing test, and the subject individual does not respond in a stated time period, the Department shall make a fitness determination based on available information or close the case.

Stat. Auth.: ORS 181.534, 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537

Hist.: DHS 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08

407-007-0070

Fitness Determinations

(1) Preliminary Fitness Determination. A preliminary fitness determination is required to determine if a subject individual may work, volunteer, be employed, or otherwise perform in positions covered by these rules prior to a final fitness determination. The Department may not allow a subject individual to work, volunteer, or otherwise perform in positions covered by these rules prior to the completion of a preliminary fitness determination.

(a) DHS Criminal History Request Form Completed. The subject individual shall complete and submit a DHS Criminal History Request form.

(b) Preliminary Fitness Determination Required. The CRU shall complete a preliminary fitness determination and send notice to the hiring manager.

(c) Preliminary Fitness Determination Outcomes. After review of the DHS Criminal History Request form, the CRU shall make one of the following determinations:

(A) Hired on a Preliminary Basis. A subject individual may be hired or accepted into a position on a preliminary basis and allowed to participate in the training for, orientation to, and work activities of volunteering, employment, or other positions covered by these rules. The term "hired on a preliminary basis" is applicable only during the timeframe prior to a final fitness determination.

(i) If there is no indication of a potentially disqualifying crime or condition on the DHS Criminal History Request form and the Department has no reason to believe the subject individual has potentially disqualifying history, the subject individual may be hired on a preliminary basis.

(ii) When a subject individual discloses convictions or arrests for a potentially disqualifying crime, or any other potentially disqualifying condition, the individual may be hired on a preliminary basis only after the completion of a weighing test. A subject individual may be hired on a preliminary basis only if, based on information available at the time, the Department determines that more likely than not that the subject individual poses no potential threat to the Department, its clients, or vulnerable persons.

(B) No hiring allowed. When a subject individual discloses a conviction or arrest for a potentially disqualifying crime or any other potentially disqualifying condition the Department shall conduct a weighing test. The Department may not hire on a preliminary basis if the Department determines that:

(i) The subject individual may pose a potential threat to the Department, its clients, or vulnerable persons;

(ii) There is not enough available information to determine the level of potential threat posed by the subject individual;

(iii) The subject individual has previously been denied under these rules or other Department criminal history check rules; or

(iv) The subject individual is currently involved in contesting a criminal history check under these or other Department criminal history check rules.

(d) Active Supervision while Hired on a Preliminary Basis. A subject individual who is hired on a preliminary basis shall be actively supervised at all times by an individual who has been approved without restrictions pursuant to these rules or previous Department criminal history check rules.

(A) At all times the individual providing active supervision shall do all of the following:

(i) Be in the same building as the subject individual or, if outdoors, be within line of sight or hearing of the subject individual;

(ii) Know where the subject individual is and what the subject individual is doing; and

(iii) Periodically observe the actions of the subject individual.

(B) A subject individual who was approved without restrictions within the previous 24 months through a documented criminal history check pursuant to these rules or other DHS criminal history check rules may work after being hired on a preliminary basis without active supervision. The 24 month time frame is calculated from the date of previous approval to the date starting the new position. This exemption is not allowed in any of the following situations:

(i) If the subject individual cannot provide documented proof that he or she worked continuously under the previous approval for at least one year.

(ii) If there is evidence of criminal activity within the previous 24 months.

(iii) If, as determined by the Department, the job duties in the new position are so substantially different from the previous position that the previous fitness determination is inadequate for the current position.

(e) Revocation.

(A) The Department may immediately remove a subject individual hired on a preliminary basis for the following reasons:

(i) There is any indication of falsification of the application.

(ii) The subject individual fails to disclose convictions for any potentially disqualifying crimes, any arrests that did not result in convictions, or any out of state arrests or convictions.

(iii) The Department determines that allowing the subject individual to be hired on a preliminary basis is not appropriate, based on the application, criminal history, position duties, or regulations regarding the position.

(B) Revocation pursuant to this section is not subject to hearing or appeal.

(f) Hiring or Placement Not Required. Nothing in this rule is intended to require that a subject individual, who is eligible for being hired on a preliminary basis be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules prior to a final fitness determination.

(2) Final Fitness Determination. The Department shall conduct a final fitness determination after all necessary criminal history checks have been completed. The Department may obtain and consider additional information as necessary to complete the final fitness determination.

(a) Final Fitness Determination Outcomes.

(A) Approved. The Department may approve a subject individual if:

(i) The subject individual has no potentially disqualifying crimes or potentially disqualifying conditions; or

(ii) The subject individual has potentially disqualifying crimes or potentially disqualifying conditions and, after a weighing test, the Department determines that more likely than not that the subject individual poses no risk to the Department, its clients, or vulnerable persons.

(B) Approved with Restrictions. The Department may approve a subject individual with restrictions if it determines that more likely than not that the subject individual poses no risk to the Department, its clients, or vulnerable persons, if certain restrictions are placed on the subject individual, such as but not limited to restrictions to one or more specific clients, job duties, or environments. The Department shall complete a new criminal history check and fitness determination on the subject individual before removing a restriction. A fitness determination of approved with restrictions shall only be considered for the following subject individuals:

(i) An individual secured by the Department through the services of a temporary employment agency, staffing agency, or personnel services agency who is providing any of the duties or having access as described in OAR 407-007-0060(1)(c).

(ii) A volunteer or student over whom the Department has direction and control.

(iii) A Department client who is placed in a work experience program at a Department site.

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(iv) Any individual who is required to complete a criminal history check pursuant to the statutory authority of ORS 181.534 and 181.537 or the authority of these rules pursuant to a contract with the Department.

(C) Denied. The Department shall deny a subject individual whom it determines, after a weighing test, more likely than not poses a risk to the Department, its clients, or vulnerable individuals.

(d) Fitness Determination by the CRU. The CRU may assist in or handle final fitness determinations as requested by Department staff.

(3) Closed Case.

(a) Incomplete Application. If the subject individual discontinues the application or fails to cooperate with the criminal history check process, the application is considered incomplete and will be closed. Discontinuance or failure to cooperate includes, but is not limited to the following circumstances:

(A) The subject individual refuses to be fingerprinted when required by these rules.

(B) The subject individual fails to respond within a stated period of time to a request for corrections to the application, fingerprints or provide any other information necessary to conduct a criminal history check and there is not enough information available to make a fitness determination.

(C) The subject individual withdraws the application, leaves the position prior to completion of the check, or cannot be located or contacted by the Department.

(D) The subject individual is determined to be ineligible for the position for reasons other than the criminal history check.

(b) No Hearing Rights. When the application is closed without a final fitness determination, there is no right to contesting the closure.

(4) Notice to Subject Individual. Upon completion of a final fitness determination resulting in denied or approved with restrictions, the Department shall provide written notice to the subject individual.

(a) Notice of Fitness Determination. The notice shall:

(A) Be in a Department approved format;

(B) Include information regarding appeal rights and the notice becoming a final order in the event of a withdrawal or of failure to appear at the hearing; and

(C) Be mailed or hand-delivered to the subject individual as soon as possible, but no later than 14 calendar days after the decision. The date of the decision shall be recorded on the form.

(b) Other Documents. The Department shall also provide employees with all formal disciplinary documents and letters up to and including a letter of dismissal.

(5) Termination Following Denial or Closed Case. When a subject individual is denied or a case is closed, the individual shall not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules. A denial or closed case applies only to the position and application in question.

(a) Dismissal or Discharge of Employees. The process for a Department employee's removal from service or dismissal shall adhere to Department-wide Support Services policies on discharge, Department of Administrative Services Human Resource Services Division policies on dismissal, and collective bargaining agreements on discharge, as applicable.

(b) Dismissal of all Other Subject Individuals. For all other subject individuals, a denial or closed case shall result in immediate dismissal.

(6) Documentation. Preliminary and final fitness determinations shall be documented in writing, including any details as needed such as but not limited to the restrictions in a restricted approval, the potentially disqualifying crimes or convictions in a denial, or the reasons for a closed case.

(7) No Binding Precedent. The Department shall make new fitness determinations for each application. The outcome of previous fitness determinations do not ensure the same outcome of a new fitness determination.

Stat. Auth.: ORS 181.534, 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537

Hist.: DHS 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08

407-007-0080

Contesting a Final Fitness Determination

(1) Fitness Determinations to Contest. A final fitness determination of denied or approved with restrictions is considered an adverse outcome. A subject individual with an adverse outcome may contest that outcome.

(2) Work Pending Appeal Prohibited. If a subject individual is denied, then the individual may not work, volunteer, be employed, or otherwise perform in positions covered by these rules. A subject individual appealing a restricted approval may only work under the terms of the restriction during the appeal.

(3) Employment Not Guaranteed. If an adverse outcome is changed at any time during the appeal process, such change does not guarantee employment or placement.

(4) History Disputed.

(a) Correcting Disputed History. If a subject individual wishes to challenge the accuracy or completeness of criminal offender information provided by OSP, the FBI, or other criminal history information from other agencies reporting information to the Department, the subject individual may appeal to the entity providing the information. Such challenges are not subject to the Department's appeal process.

(b) Disputed and Undisputed History. If a subject individual is disputing some criminal history and challenging a final fitness determination on other undisputed criminal history, no new fitness determination can be completed until the issue of the disputed history is resolved, and documentation of the resolution is provided to the Department.

(5) Legal Representation. The subject individual has the right to represent himself or herself or have a legal representative during the appeal process. The subject individual may not be represented by a lay person. In this rule, the term "subject individual" shall be considered to include the subject individual's legal representative.

(6) Challenging the Fitness Determination. A subject individual who wishes to challenge an adverse fitness determination may appeal the determination by requesting a contested case hearing. The appeal process is conducted pursuant to ORS 183.411 through 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 through 137-003-0700.

(a) Appeal. To request a contested case hearing the subject individual shall complete and sign the DHS Hearing Request form. The form is provided with a notice of fitness determination and is also available by contacting the CRU.

(b) Deadline for Appeal. The completed and signed form must be received by the Department:

(A) For Department employees, no later than 15 calendar days after the date of signature on the notice of the fitness determination.

(B) For all other subject individuals, no later than 45 calendar days after the date of signature on the notice of the fitness determination.

(c) Untimely Appeal. In the event a request for an appeal is not timely, the Department will determine, based on a written statement from the subject individual and available information, if there is good cause to proceed with the appeal.

(d) Hearing on Timeliness. The Department may refer an untimely request to the OAH for a hearing on the issue of timeliness.

(7) Criminal History Check. The Department may conduct additional criminal history checks during the appeal process to update or verify the subject individual's criminal history.

(8) Withdrawal. The subject individual may withdraw a hearing request verbally or in writing at any time. The withdrawal is effective the date it is received by the Department or the OAH. The subject individual may cancel the withdrawal in writing up to 14 calendar days after the date of withdrawal.

(9) Contested Case Hearing.

(a) Procedural Documents and Exhibits. The Department shall provide to the administrative law judge and the subject individual a complete copy of available information. The notice of contested case and prehearing summary shall be mailed by certified mail through the U.S. Postal Service. All other documents shall be mailed by regular first class mail.

(b) Public Attendance. The contested case hearing is not open to the public.

(c) New Fitness Determination. The administrative law judge shall make a new fitness determination based on the evidence and the contested case hearing record.

(10) Proposed and Final Orders.

(a) Notice of Fitness Determination as Final Order. In the following situations, the notice of fitness determination issued is final as if the subject individual never requested a hearing:

(A) Failure to request a hearing in the time allotted in this rule. No other document will be issued after the notice of fitness determination.

(B) Withdrawal of the request for hearing at any time during the appeal process.

(b) Informal Disposition. The Department may make an informal disposition based on review of available information and discussion with the subject individual. The Department shall issue a final order and new notice of fitness determination.

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(c) Dismissal Order. A hearing request is dismissed when the subject individual fails to appear at the time and place specified for the contested case hearing. The order is effective on the date scheduled for the hearing. The Department shall review a request to cancel the dismissal for good cause if received in writing within 14 calendar days from the date of the dismissal order.

(d) Order after Hearing. After a hearing, the administrative law judge shall issue a proposed and final order.

(A) If no written exceptions are received by the Department within 14 calendar days after the service of the proposed and final order, the proposed and final order shall become the final order.

(B) If timely written exceptions to the proposed and final order are received by the Department, the Department Director or the Director's designee shall consider the exceptions and serve a final order, or request a revised proposed and final order from the administrative law judge.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537, 183.341
Hist.: DHS 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08

407-007-0090

Record Keeping, Confidentiality

(1) LEADS Reports. All LEADS reports are confidential and shall be maintained by the Department in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(a) LEADS Access. LEADS reports are confidential and may only be shared with approved Department employees if there is a need to know consistent with these rules.

(b) Subject Individual Access. The LEADS report, and photocopies of the LEADS report, may not be shown or given to the subject individual.

(2) National (FBI) Information. The results of a national criminal history check provided by the FBI or through OSP are confidential and may not be disseminated by the Department, with the following exceptions:

(a) Subject Individual Request. If a fingerprint-based criminal history check was conducted on the subject individual, the subject individual shall be provided a copy of the results if requested.

(b) Contested Case Hearing Exhibits. If authorized by the subject individual, the results of the national criminal history check shall be provided as exhibits during the contested case hearing.

(3) Department Forms and Other Documentation. All completed DHS Criminal History Request forms, other criminal history information and other records collected or developed during the criminal history check process shall be kept confidential and disseminated only on a need-to-know basis.

(4) Retention. All criminal history check documents shall be retained and destroyed pursuant to federal law and records retention schedules published by Oregon State Archives.

Stat. Auth.: ORS 181.534, 181.537, 409.050
Stats. Implemented: ORS 181.534, 181.537
Hist.: DHS 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08

407-007-0210

Definitions

As used in OAR chapter 407, division 007, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Adult Foster Home" has the same definition as is provided in ORS 443.705.

(2) "Approved" means that a subject individual has completed the criminal history check process, including any required fitness determination, and is eligible to provide care or reside in an environment covered by these rules.

(3) "Authorized Designee" means a person who is designated by an approved qualified entity and authorized by the Department to receive and process criminal history check request forms from subject individuals and criminal history information from the Department. The authorized designee conducts fitness determinations under the authority of the Department.

(4) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, transportation, recreation or support to children, the elderly or persons with disabilities.

(5) "Client" means any person who receives care, or funding for care, through the Department.

(6) "Contact Person" means a person who is designated by an approved qualified entity to receive and process criminal history check request forms from subject individuals, but who is not authorized to receive criminal history information from the Department. The contact person is not allowed to make final fitness determinations. The contact person is allowed to make the preliminary fitness determinations under the authority

of the Department only if there is no indication of potentially disqualifying crimes or conditions.

(7) "Conviction" means that the subject individual was convicted in a court of law, or was adjudicated in a juvenile court and found responsible for the crime. "Conviction" as used in these rules includes a finding of "guilty except by reason of insanity," "guilty except for insanity," "not guilty by reason of insanity," or similarly worded findings. Entering a plea of "guilty" or "no contest" is also considered a conviction for the purpose of these rules unless a subsequent court decision has dismissed the charges.

(8) "Criminal History Check Rules" or "These Rules" means OAR chapter 407, division 007.

(9) "Criminal History Check" or "CHC" means the Oregon Criminal History Check and when required, a National Criminal History Check and/or a State-Specific Criminal History Check, and the processes and procedures required by these rules.

(10) "Criminal History Information" means criminal justice records, fingerprints, court records, sexual offender registration records, warrants, DMV information, information provided on the Department's criminal history check forms, and any other information obtained by or provided to the Department pursuant to these rules for the purpose of conducting a fitness determination. "Criminal history information" does not include violations or infractions (See ORS 161.505-161.585).

(11) "Denied" means that a subject individual following a fitness determination, including a weighing test, has been found to be not eligible to hold the position, be employed, certified, licensed, registered or otherwise authorized by the Department to provide care or to reside in an environment covered by these rules.

(12) "Department" means the Oregon Department of Human Services or any subdivision thereof.

(13) "Employer," if the qualified entity is a corporation, means the corporation or parent corporation.

(14) "Facility" means any entity that is licensed or certified by the Department and which provides care.

(15) "Homecare Worker" or "Home Care Worker" means a provider who is enrolled in the Department's client-employed provider program and who provides either hourly or live-in services, as defined in ORS 410.600.

(16) "Independent Provider" means a person who meets the qualifications described in OAR 411-305-0020, 411-330-0020 or 411-340-0020.

(17) "National Criminal History Check" means obtaining and reviewing criminal history outside Oregon's borders. This information may be obtained from the Federal Bureau of Investigation through the use of fingerprint cards and from other criminal information resources.

(18) "Oregon Criminal History Check" means obtaining and reviewing information from the Oregon State Police's Law Enforcement Data System (LEDS). The Oregon Criminal History Check may also include a review of information from the Oregon Judicial Information Network (OJIN), Oregon Department of Corrections records, Motor Vehicles Division, local or regional criminal history information systems, or other official law enforcement agency or court records in Oregon.

(19) "Personal Care Services Provider" means a person who is directly employed by a client of the Department to provide assistance with activities of daily living and other activities as described in OAR chapter 411, division 34.

(20) "Potentially Disqualifying Crime" means a crime listed in OAR 407-007-0280.

(21) "Probationary Status" means a condition in which a subject individual may be allowed by the authorized designee to work, volunteer, be trained or reside in an environment covered by these rules following submission of a completed DHS Criminal History Request form. The term "probationary status" is applicable only during the timeframe prior to a final fitness determination.

(22) "Qualified Entity" means the Department; local government agency; community mental health or developmental disability program, local health department or an individual or business or organization, whether public, private, for-profit, nonprofit or voluntary, that provides care, including a business or organization that licenses, certifies or registers others to provide care.

(23) "Qualified Vendor" means a supplier of criminal history information who is approved by the Department of Human Services as having access to substantially the same criminal offender information as the Law Enforcement Data System.

(24) "Related" means spouse, domestic partner, natural parent, child, sibling, adopted child, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, broth-

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er-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(25) "Service Provider" means a person or entity that is licensed, certified, registered, or otherwise regulated or authorized for payment by the Department and that provides care.

(26) "State-Specific Criminal History Check" means obtaining and reviewing information from law enforcement agencies, courts or other criminal history information resources located in a state or jurisdiction outside Oregon.

(27) "Subject Individual" means a person who is required to complete a criminal history check pursuant to these rules.

(a) "Subject individual" includes:

(A) A person who is licensed, certified, registered or otherwise regulated or authorized for payment by the Department and who provides care.

(B) An employee or volunteer who provides care within any entity or agency licensed, certified, registered or otherwise regulated by the Department.

(C) A direct care staff person secured through the services of a personnel services or staffing agency who works in any long term care facility licensed by the Department pursuant to ORS chapter 441.

(D) Except as provided in paragraphs (27)(b)(C) and (D) of this rule, a person who lives in a facility that is licensed, certified, registered or otherwise regulated by the Department to provide care.

(E) An individual working for a private, licensed child caring agency or system of care contractors providing child welfare services pursuant to ORS chapter 418.

(F) A homecare worker, personal care services provider or an independent provider employed by a Department client and who provides services to the client if the Department helps to pay for the services.

(G) A child care provider reimbursed through the Department's child care program, and employees and other persons in child care facilities that are exempt from certification or registration by the Child Care Division of the Employment Department. This includes all persons who reside in or who are frequent visitors to the residence or facility where the child care services are provided and who may have unsupervised access to the children. (REF: OAR chapter 461, division 165.)

(H) A contact person or authorized designee as defined in OAR 407-007-0210.

(I) A person providing training to staff within a long term care facility.

(J) Any person serving as an owner, operator or manager of a room and board facility pursuant to OAR chapter 411, division 68.

(K) Notwithstanding subsection (27)(b) of this rule, any person who is required to complete a criminal history check pursuant to a contract or written agreement with the Department or by other Oregon Administrative Rules of the Department, if the requirement is within the statutory authority granted to the Department. Specific statutory and rule authority must be specified in the contract.

(b) "Subject Individual" does not include:

(A) Any person under 16 years of age.

(B) A person receiving training in a DHS-licensed facility as a part of the required curriculum through any college, university or other training program and who is not an employee in the facility in which training is provided. Facilities must ensure that all such students have passed a substantially equivalent background check process through the training program or are:

(i) Actively supervised at all times as defined in OAR 407-007-0310, and

(ii) Not allowed to have unsupervised access to vulnerable people.

(C) Residents of facilities licensed, certified or registered by the Department who are receiving care or treatment, unless specific, written permission to conduct a criminal history check is received from the Department. The only circumstance in which the Department will allow a check to be performed on a client pursuant to this paragraph is if the client falls within the definition of "subject individual" as listed in subsection (27)(a) of this rule.

(D) Persons who live in or visit relative adult foster homes. This exemption does not apply to the licensee.

(E) Individuals working in child care facilities certified or registered by the Employment Department.

(F) Individuals employed by a private business that provides services to clients and the general public and that is not regulated by the Department.

(G) Individuals employed by a business that provides appliance repair or structural repair to clients and the general public, and who are temporar-

ily providing such services in an environment regulated by the Department. This exclusion does not apply to a business that receives funds from the Department for care provided by an employee of the business.

(H) Individuals employed by a private business in which a client of the Department is working as part of an employment service program sponsored by the Department. This exclusion does not apply to an employee of a business that receives funds from the Department for care provided by the employee.

(I) Employees and volunteers working in hospitals, ambulatory surgical centers, special inpatient care facilities, outpatient renal dialysis facilities, and freestanding birthing centers as defined in ORS 442.015, in-home care agencies as defined on ORS 443.305, and home health agencies as defined in ORS 443.005. This exclusion does not apply to subject individuals in State-operated group homes within the Department's State-Operated Community Programs, Blue Mountain Recovery Center, Eastern Oregon Training Center, or Oregon State Hospital as defined in subsection (27)(a) of this rule.

(J) Volunteers who are not under the direction and control of the Department or any entity licensed, certified, registered or otherwise regulated by the Department.

(K) Individuals employed or volunteering in a Medicare-certified health care business which is not subject to licensure or certification by the State of Oregon.

(L) People working in restaurants or at public swimming pools.

(M) Hemodialysis technicians.

(N) Individuals employed by Alcohol and Drug Programs that are certified, licensed, or approved by the Office of Mental Health and Addictions Services to provide Prevention, Evaluation or Treatment Services. This exclusion does not apply to programs specifically required by other Department rules to conduct criminal history checks in accordance with these rules.

(O) Persons working for a transit service provider which conducts background checks pursuant to ORS 267.237.

(P) Persons being certified by the Department as interpreters pursuant to ORS 409.623. This paragraph is not intended to exempt a Department-certified interpreter from a criminal history check when being considered for a specific position.

(Q) Provider group categories that were authorized for payment by the Department for care if such provider group categories were not covered by a Department criminal record check process prior to 2004.

(R) Foster and adoptive parents providing care for children pursuant to ORS chapter 418.

(S) Emergency Medical Technicians and First Responders certified by the Department of Human Services Emergency Medical Services and Trauma Systems program.

(T) A person employed by an entity that provides services solely contracted under ORS 414.022.

(28) "Weighing Test" means a process carried out by one or more authorized designees in which known negative and positive information is considered to determine if a subject individual is approved or denied. See OAR 407-007-0320(5)(c).

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0210, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08

407-007-0270

National Criminal History Check Process

(1) National Criminal History Check. In addition to an Oregon check (OAR 407-007-0250), a national criminal history check may be required by the Department under any of the following circumstances:

(a) Out-of-State Residency. The subject individual has lived outside Oregon for 60 or more consecutive days during the previous three (3) years with the following exceptions:

(A) Child Care Providers (18 months). The subject individual is a child care provider or other person included in OAR 407-007-0210(27)(a)(H) who has lived outside Oregon for 60 or more consecutive days during the previous eighteen months.

(B) Child Welfare System (5 years). The subject individual is working for private, licensed child caring agencies and system of care contractors providing child care pursuant to ORS chapter 418 and has lived outside Oregon for 60 or more consecutive days during the previous five years.

(b) Criminal History Outside Oregon. The LEDS check, or any other information obtained by the Department, indicates there may be criminal

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history outside of Oregon, or the subject individual self-discloses criminal history outside of Oregon.

(c) Identity or History Questioned. The social security number appears not to be valid or is not provided to the Department on the DHS Criminal History Request form, the subject individual has no Oregon driver's license or Oregon identification card, or the Department has other reason to question the identity or history of the subject individual.

(2) Fingerprinting a Juvenile. Consent of the parent or guardian is required to obtain fingerprints from a child under the age of 18 years.

(3) Processing. The subject individual must complete and submit a fingerprint card when requested by the Department.

(a) Fingerprint Cards. The subject individual must use a fingerprint card (Example: FBI Form FD 258) provided by the Department.

(b) Time Frame for Return. The card must be submitted within 21 days of the request to the Department's Criminal Records Unit to avoid closure of application pursuant to OAR 407-007-0320(5)(e).

(c) Extension. The Department may extend the time allowed for good cause.

(4) Additional Information Required. In order to conduct a national check and complete a fitness determination, the Department or the authorized designee may require additional information from the subject individual as necessary, such as but not limited to proof of identity; residential history; names used while living at each residence; or additional criminal, judicial, or other background information.

(5) Department Makes Final Fitness Determination. When a subject individual has a potentially disqualifying national criminal history or discloses potentially disqualifying out of state criminal history, the Department makes the final fitness determination.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0270, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08

407-007-0330

Contesting a Fitness Determination

(1) Work Pending Appeal Prohibited. If a subject individual is denied, then that person may not hold the position, provide services or be employed, licensed, certified or registered.

(2) History Disputed.

(a) Correcting Disputed History. If a subject individual wishes to challenge the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation or other agencies reporting information to the Department, the subject individual may appeal to the entity providing the information. Such challenges are not subject to the Department's appeal process described in this rule.

(b) Request for Re-Evaluation Following Correction. If the subject individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation or other agency reporting information to the Department, the Department will conduct a new criminal history check and re-evaluate the criminal history upon submission of a new criminal history request form.

(3) Challenging the Fitness Determination. If a subject individual wishes to dispute an adverse fitness determination, the subject individual may appeal the determination by requesting a contested case hearing. The subject individual must be notified of the opportunity for appeal on a form available from the Department.

(a) Appeal. In order to request a contested case hearing the subject individual or the subject individual's legal representative must complete and sign the hearing request form. The form is available by contacting the DHS Criminal Records Unit.

(b) Deadline for Appeal. The completed and signed form must be received by the Department not later than 45 days after the notice of the fitness determination is signed.

(c) Extension of Deadline. The Department may extend the time to appeal if the Department determines the delay was caused by factors beyond the reasonable control of the subject individual.

(d) Hearing on timeliness. The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the issue of timeliness.

(4) Informal Administrative Review. When a subject individual is denied and the subject individual, or the subject individual's legal representative, requests a contested case hearing, the Department may conduct an informal administrative review before referring the appeal to the Office of Administrative Hearings.

(a) Participation by Subject Individual. The subject individual and, if applicable, the subject individual's legal representative, may participate in the informal administrative review.

(A) Participation may include, but is not limited to:

(i) Providing fingerprint cards, if not previously provided, for the purpose of a national check pursuant to OAR 407-007-0270 or to confirm identity.

(ii) Providing additional information or additional documents.

(iii) Participating in a telephone conference.

(B) Failure to participate in the informal administrative review by the subject individual or the subject individual's representative may result in termination of hearing rights. The Department will review a request to reinstate hearing rights if received in writing by the Department within 14 days.

(b) Criminal history check.

(A) If the denial was based on disclosed criminal history, the Department will conduct a criminal history check during the informal administrative review.

(B) The Department may conduct additional criminal history checks during the informal administrative review to update or verify the subject individual's criminal history.

(c) Weighing Test Always Applied. The Department will use the weighing test as described in these rules during the administrative review.

(d) Content of Administrative Review. The Department representative, the authorized designee, the subject individual and the subject individual's legal representative may discuss any of the matters listed in OAR 137-003-0575(3). The administrative review may also be used to:

(A) Inform the subject individual of the rules that serve as the basis for the denial.

(B) Ensure the subject individual understands the reason for the denial.

(C) Give the subject individual an opportunity to review the information that is the basis for the denial, except as prohibited by state or federal law (See OAR 407-007-0340(2)).

(D) Give the Department and subject individual an opportunity to research or provide additional information to consider as listed in OAR 407-007-0300.

(E) Give the Department and the subject individual the opportunity to correct any misunderstanding of the facts.

(F) Provide an opportunity for the Department and the subject individual to resolve the situation, including developing an agreement whereby the subject individual may be approved with restrictions.

(G) Determine if the subject individual wishes to have any witness subpoenas issued should a formal hearing be necessary.

(e) Decision Following Administrative Review. Upon completion of the informal review, the subject individual or the subject individual's legal representative is advised by the Department in writing of the finding within 14 days.

(f) Hearing Following Administrative Review. If the informal administrative review reverses the denial, no hearing will be held and the appeal will not be forwarded to the Office of Administrative Hearings. If the informal administrative review upholds the denial, the appeal will be referred to the Office of Administrative Hearings and a hearing is held unless the subject individual or the subject individual's legal representative withdraws the request for a contested case hearing or the Department reverses the denial before the hearing is held.

(5) Contested Case Hearing.

(a) Format. The hearing is conducted in accordance with Attorney General's Uniform and Model Rules of Procedure, "Hearing Panel Rules," OAR 137-003-0501 and the rules that follow.

(b) Department Representation. Employees of the Department may in accordance with ORS 183.452 be authorized by the Department's Director to represent the Department for the contested case hearing. Authorization from the Office of Attorney General is also required. The Department retains the right to be represented by the Attorney General.

(c) Exhibits. The administrative law judge must be provided a complete copy of the criminal history check information as follows:

(A) In the case of federal criminal history and criminal history from jurisdictions outside Oregon, the subject individual must obtain copies of the FBI criminal history report, or a copy of the state criminal history report from each state in which there was criminal or arrest history recorded. The subject individual or the subject individual's legal representative must provide copies of such documentation to the administrative law judge at least seven days prior to the scheduled hearing. The Department may also provide out-of-state information received from other official sources.

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(B) In the case of Oregon criminal history, the Department may provide a copy of the LEDS print-out, OJIN records or other court records to the administrative law judge, unless to do so would result in ex parte communication.

(C) Criminal history information and correspondence regarding the subject individual's criminal history check are prima facie evidence if certified by the Department representative as a true copy.

(d) Role of Administrative Law Judge. The Office of Administrative Hearings and the administrative law judge perform the following duties in the hearing process:

(A) Provide the subject individual or the subject individual's legal representative with all of the information required under ORS 183.413(2) in writing before the hearing;

(B) Conduct the hearing;

(C) Issue a dismissal by order when neither the subject individual nor the subject individual's representative appears at the hearing; and

(D) Issue a proposed order.

(e) Public Attendance. The informal conference and hearing are not open to the public.

(f) Coordination with Licensure or Certification Hearing. A hearing pursuant to these rules may be conducted in conjunction with a licensure or certification hearing for the subject individual.

(6) Withdrawal. The subject individual or the subject individual's legal representative may withdraw a hearing request orally or in writing at any time. The withdrawal is effective the date it is received by the Department or the Office of Administrative Hearings. A dismissal order will be issued by the Department or the Office of Administrative Hearings. The subject individual may cancel the withdrawal up to 14 days after the date the order is served.

(7) Proposed and Final Order.

(a) Informal Disposition. When an appeal is resolved before being referred to the Office of Administrative Hearings due to an administrative review or withdrawal, the Department will serve a final order confirming the resolution.

(b) Failure to Appear. A hearing request is dismissed by order when neither the subject individual nor the subject individual's legal representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing and is served by the Office of Administrative Hearings. The Department will cancel the dismissal order on request of the subject individual or the subject individual's legal representative on a showing that the subject individual and the subject individual's legal representative were unable to attend the hearing and unable to request a postponement for reasons beyond their control.

(c) Proposed Order. After a hearing, the administrative law judge issues a proposed order. If no written exceptions are received by the Department within 14 days after the service of the proposed order, the proposed order becomes the final order.

(d) Exceptions. If timely written exceptions to the proposed order are received by the Department, the Department Director or the Director's designee will consider the exceptions and serve a final order, or request a revised proposed order from the administrative law judge.

(e) Results to qualified entity. The Department may provide the qualified entity with the results of the appeal after the informal administrative review or contested case hearing.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537, 183.341

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0330, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08

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 1-2008

Filed with Sec. of State: 4-1-2008

Certified to be Effective: 4-1-08

Notice Publication Date: 1-1-0818

Rules Adopted: 413-050-0235

Rules Amended: 413-050-0200, 413-050-0210, 413-050-0220, 413-050-0230, 413-050-0280

Rules Repealed: 413-050-0200(T), 413-050-0210(T), 413-050-0220(T), 413-050-0230(T), 413-050-0235(T), 413-050-0240, 413-

050-0250, 413-050-0260, 413-050-0270, 413-050-0280(T), 413-050-0290, 413-050-0300

Subject: The Department is adopting OAR 413-050-0235; amending OAR 413-050-0200, 413-050-0210, 413-050-0220, 413-050-0230, and 413-050-0280; and repealing OAR 413-050-0240, 413-050-0250, 413-050-0260, 413-050-0270, 413-050-0290, and 413-050-0300, which concern the Supportive or Remedial Day Care (SRDC) program in Child Welfare. These changes were originally made by temporary rule on October 1, 2007. The changes to these rules revise the definition of key terms, revise service criteria, and set the Department's policy for rates and provider selection in the SRDC program. In the revised rules, service criteria are more clearly and specifically described; use of SRDC to support employment of a parent or caretaker is limited; use of a professional evaluation to determine a child's special needs is required; the length of time SRDC may be provided is revised and reduced; the exception process is revised and now allowed only for the length of time SRDC is provided and for the rate paid; and exceptions must be authorized by the District Manager. In addition, these rules have been changed to reflect new Department terminology and to correct formatting and punctuation as appropriate.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-050-0200

Purpose

The purpose of these rules (OAR 413-050-0200 to 413-050-0280) is to describe service authorization criteria and methods to determine the payment rate related to the Department of Human Services Supportive or Remedial Day Care (SRDC) service.

Stat. Auth.: ORS 181.534, 181.537, 409.050, 418.005

Stats. Implemented: ORS 181.534, 181.537, 409.010, 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03; CWP 41-2003, f. & cert. ef. 12-12-03; CWP 17-2007(Temp), f. & cert. ef. 11-1-07 thru 4-28-08; CWP 1-2008, f. & cert. ef. 4-1-08

413-050-0210

Definition

The following definitions apply to OAR 413-050-0200 to 413-050-0280:

(1) "Case plan" means a goal oriented, time limited individualized plan for the child and the child's family, developed by the Department and the parents or legal guardians, that identifies the family behaviors, conditions, or circumstances, safety threats to the child, and the expected outcomes that will improve the protective capacity of the parents or legal guardians.

(2) "CCD" means the Child Care Division of the Employment Department.

(3) "Day care provider" means a day care provider regulated by the Child Care Division (CCD) or if exempt from CCD regulation, approved by the Department for payment as a day care provider, foster parent, or relative caregiver.

(4) "Department" means the Department of Human Services.

(5) "Expert evaluation" means a written assessment prepared by a professional with specialized knowledge of a particular subject matter such as physical health, psychological health, mental health, sexual deviancy, substance abuse, and domestic violence. The assessment provides information regarding an individual's functioning in the area of the professional's specialized knowledge.

(6) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(7) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(8) "SRDC" means supportive or remedial day care services, which are a time-limited day care service that the Department provides to an eligible child subject to the availability of allocated funds and other limitations prescribed in these rules (OAR 413-050-0200 to 413-050-0280).

(9) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody of the Department.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03; CWP 41-

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2003, f. & cert. ef. 12-12-03; CWP 17-2007(Temp), f. & cert. ef. 11-1-07 thru 4-28-08; CWP 1-2008, f. & cert. ef. 4-1-08

413-050-0220

Service Authorization Criteria

(1) Except as provided in sections (2), (3), and (4) of this rule and in OAR 413-050-0230, the Department may purchase Supportive or Remedial Day Care Services (SRDC) if:

(a) A child under 13 years of age is receiving Child Protective Services, Substitute Care, or Family Support Services; and

(b) SRDC will:

(A) Prevent the placement of the child into substitute care;

(B) Facilitate the child's return to the child's parent or legal guardian with an in-home safety plan;

(C) Meet the needs of a child whose physical, social, mental, or emotional needs, as documented by an expert evaluation, cannot be fully met by the parent or legal guardian;

(D) Allow a parent or legal guardian to participate in specific activities or services described in the case plan;

(E) Maintain the child's placement with his or her current relative caregiver or foster parent that is in jeopardy due the caregiver's illness; or

(F) Maintain the child's placement with his or her current relative caregiver or foster parent as part of a short term, planned support to stabilize the placement.

(2) SRDC may be used to temporarily support the employment or educational activities of a parent, legal guardian, relative caregiver, or foster parent for a maximum of one month to allow transition to another child care resource.

(3) Except as provided in section (4) of this rule, SRDC service in the child's home may be authorized when the requirements of subsections (a) or (b) of this section are met:

(a) A child, who is ordinarily in SRDC purchased by the Department, is ill.

(A) This is limited to no more than five days of care in any calendar month and may not exceed the number of hours per day already authorized.

(B) When a child who is ordinarily in SRDC purchased by the Department is ill, an additional payment may be made to a day care provider, who is either a regulated CCD provider, or if exempt from CCD regulation a Department-approved day care provider, relative caregiver, or foster parent.

(b) A child who has a disability requires care and no out-of-home day care is available or can be developed that meets the child's needs.

(A) Document the unsuccessful effort made to locate or develop a Day Care Home or Center resource; and

(B) Describe the specific problem that requires services in the child's home.

(4) The plan for care in the child's home may not exceed the cost of out-of-home day care.

(5) Case Record Documentation:

(a) The caseworker must review the appropriateness of an SRDC service as a component of the case plan. The caseworker must document that the SRDC service will be part of a coordinated, goal oriented, time limited case plan that will accomplish one or more of the purposes described in paragraphs (A) to (F) in subsection (1)(b) of this rule.

(b) The caseworker must document in the case record how the SRDC service will support or assist in achieving the case plan or maintaining the child's placement.

(6) The caseworker's supervisor must approve the use of the SRDC service.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03; CWP 41-2003, f. & cert. ef. 12-12-03; CWP 17-2007(Temp), f. & cert. ef. 11-1-07 thru 4-28-08; CWP 1-2008, f. & cert. ef. 4-1-08

413-050-0230

Service Limits

(1) Expenditures by the Department under these rules (OAR 413-050-0200 to 413-050-0280) are subject to the availability of state and federal funds, as applicable, and are subject to immediate curtailment by the Department if the necessary state or federal authorizations or funding are curtailed. If all allocated SRDC funds have been expended, caseworkers must document the unmet needs and notify the District Manager or designee of those unmet needs.

(2) The maximum amount of the SRDC service that the Department may authorize for any child per week is eight hours a day, five days a week.

(3) When SRDC services are used to permit a child to remain at home as an alternative to substitute care, to permit a child to return home from substitute care, to permit a parent or legal guardian to participate in specific activities or services described in the case plan, or because the child's physical, social, mental, or emotional needs were not being met by a parent or legal guardian (see OAR 413-050-0220(1)(b)(A)-(D)):

(a) The initial service authorization period is up to three months.

(b) The supervisor may approve an extension of the SRDC service authorization for up to an additional three months.

(c) The District Manager may review and approve a recommendation for the use of the SRDC service for longer than six months with documentation that the extension will prevent the child's placement in foster or shelter care in the very near future.

(4) When SRDC services are used (pursuant to OAR 413-050-0220(1)(b)(E) or (D)) to maintain a foster care or relative care placement jeopardized by illness of the relative caregiver or foster parent or as part of a short term, planned support to stabilize the placement:

(a) The initial SRDC service authorization period is one month.

(b) The supervisor may approve an extension of the SRDC service authorization at one month intervals for a maximum of three months.

(c) The District Manager may review and approve a recommendation for the use of the SRDC service for longer than three months with documentation that an extension will prevent the child's move to another substitute care placement.

(5) The caseworker and supervisor must review the use of an SRDC service before extending the SRDC service authorization for any additional period of time allowed in sections (3) or (4) of this rule and before recommending an extension for District Manager approval. The review will determine whether there is still a need for the SRDC services that meets the service criteria in OAR 413-050-0220(1).

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

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 13-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03; CWP 41-2003, f. & cert. ef. 12-12-03; CWP 17-2007(Temp), f. & cert. ef. 11-1-07 thru 4-28-08; CWP 1-2008, f. & cert. ef. 4-1-08

413-050-0235

Selecting a Day Care Provider

(1) This rule governs the selection of day care providers for an SRDC service under OAR 413-050-0200 to 413-050-0280.

(2) All day care providers must be regulated by the Child Care Division (CCD), or if exempt from CCD regulations, approved by the Department as a day care, foster care, or relative care provider.

(3) The caseworker assists the parent or legal guardian in selecting the day care provider that most closely matches the needs of the child and the family.

(4) The caseworker makes the final selection of the day care provider based on the needs of the child and goals of the case plan.

(5) Valid reasons for not selecting a person as a day care provider include behavior which may have a detrimental effect on a child, or a physical or mental problem which may adversely affect the child.

Stat. Auth.: ORS 181.534, 181.537, 409.050, 418.005

Stats. Implemented: ORS 181.534, 181.537, 409.010, 418.005

Hist.: CWP 17-2007(Temp), f. & cert. ef. 11-1-07 thru 4-28-08; CWP 1-2008, f. & cert. ef. 4-1-08

413-050-0280

Determining Day Care Payment Rates

(1) The Department will pay the day care provider's standard payment rate for all children or the Department SRDC service maximum payment rate (see section (6) of this rule), whichever is less.

(2) The day care provider may not ask a parent, legal guardian, relative caregiver, or foster parent for, or accept, directly or indirectly, any additional payment for care funded by the Department unless there is a written agreement between the Department and the day care provider. (See CF 116A, "Request for an Exception".)

(3) Except as provided in section (4) of this rule, when the infant payment rate has been authorized for a child and the child reaches 30 months of age, the rate must be revised.

(a) The caseworker is responsible for revising the infant payment rate, effective no later than the first of the month after the child reaches 30 months of age.

(b) The caseworker shall send the day care provider a revised CF 116, and revise the Type of Service and authorized amounts on the CF 308 and input into IIS.

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(4) Although there are no special day care rates for children who have physical, developmental, or emotional disabilities:

(a) If a child 30 months of age or over, functions below the level that is normal for children of his or her chronological age, the Department may authorize up to the infant payment rate for the care of that child.

(b) The caseworker, with supervisory approval, must document in the case record why the infant payment rate is authorized for a child 30 months or older. Documentation must include the following:

(A) The unsuccessful effort to locate a resource at the Department non-infant payment rate; and

(B) A description of the specific problem which requires services above those covered by the non-infant payment rate.

(c) The District Manager may authorize a higher payment rate than the infant payment rate when requirements of paragraphs (b)(A) and (b)(B) of this section are met and the child's need for a greater level of care is documented by an expert evaluation.

(5) Rates charged to the Department for day care services may not exceed rates charged for comparable services to children not served by the Department:

(a) Donations and subsidies of cash or in-kind services may be used to reduce charges which would otherwise be made for day care services;

(b) Such donations and subsidies must be used to reduce charges for all children in care unless the donor specifies in writing that the donation is to be used for either a specific family or category of families; and

(c) Separate records must be kept by the day care provider for all donations and subsidies received and disbursed.

(6) The maximum payment rates permitted for SRDC services are as follows:

(a) Family Day Care.

(A) Infant (under 30 months) — \$1.95 an hour per child, not to exceed \$414 per child per month.

(B) Non-infant (30 months or older) — \$1.62 an hour per child, not to exceed \$345 per child per month.

(b) Day Care Center Group Day Care Homes.

(A) Infant (under 30 months) — usual and customary rates, not to exceed \$549 per child per month.

(B) Non-infant (30 months and older) — usual and customary rates, not to exceed \$435 per child per month.

(c) Care in the child's home: The day care provider in the child's home will be paid the Oregon minimum wage, regardless of the number of children served or the age of the child.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03; CWP 41-2003, f. & cert. ef. 12-12-03; CWP 17-2007(Temp), f. & cert. ef. 11-1-07 thru 4-28-08; CWP 1-2008, f. & cert. ef. 4-1-08

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 2-2008

Filed with Sec. of State: 4-1-2008

Certified to be Effective: 4-1-08

Notice Publication Date: 2-1-2008

Rules Amended: 413-015-0100, 413-015-0110, 413-015-0115, 413-015-0205, 413-015-0415, 413-015-0420

Subject: OAR 413-015-0100 about the processes and timeline for screening reports of alleged child abuse or neglect is being amended to clarify that the rules in OAR chapter 407 division 045 contain the processes and time lines for completion of response to reports of alleged child abuse or neglect in Children's Care Providers.

OAR 413-015-0110 about the subject matter of the rules in OAR chapter 413 division 015 is being amended to reference new rules OAR 413-015-0520 to 413-015-0565 for Day Care Investigations.

OAR 413-015-0115 which defines terms used in OAR chapter 413, division 015 about child protective services (CPS) is being amended to add definitions for the terms Children's Care Provider, Day Care Facility, designated medical professional, OIT (Office of Investigations and Training), private child-caring agency, reasonable suspicion, and suspicious physical injury. This rule is also being amended to update statutory references. This rule is also being amended to implement HB 3328 (2007 Or. Laws ch. 674) and HB 3113 (2007 Or. Laws ch. 781).

OAR 413-015-0205 about Child Protective Services (CPS) screening activities is being amended to provide direction to CPS screen-

ers for transferring child abuse and neglect reports to OIT for child abuse investigative response. This rule is also being amended to clarify the screening activities that must be completed. This rule is also being amended to clarify information the screener must gather from a reporter to determine the Department's response and how to handle historical cases with the disposition of "unable to locate." This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting. This rule is also being amended to implement HB 3328 (2007 Or. Laws ch. 674) and HB 3113 (2007 Or. Laws ch. 781).

OAR 413-015-0415 about Child Protective Services (CPS) assessment activities and OAR 413-015-0420 about the initial contact the CPS worker must make are being amended to implement the provisions of HB 3328 (2007 Or. Laws ch. 674) and HB 3113 (2007 Or. Laws ch. 781), by specifying that the Department and the law enforcement agency must assure that suspicious physical injuries in which there is a reasonable suspicion of abuse are evaluated by a designated medical professional or available physician within 48 hours; requiring CPS workers photographing suspicious physical injuries to send those photographs to a designated medical professional within 72 hours; requiring that all photographs be filed in the case record and labeled with identifying information within 48 hours or the next business day, whichever occurs later; requiring the Department to make photographs of suspicious physical injuries available to multidisciplinary team (MDT) members if the case is staffed by the MDT; clarifying that photographs of the anal or genital region may be taken only by medical personnel; and stating that the CPS worker must facilitate an assessment by a medical professional if the alleged child abuse or neglect involves injury to the anal or genital region. OAR 413-015-0415 and OAR 413-015-0420 are also being amended to assist the Department in transferring the investigation of child abuse and neglect in a subset of Licensed Child Caring Agencies that will be referred to as Children's Care Providers from the CPS/CAF Program to the OIT in the Director's office. The investigation of child abuse and neglect in these mental health therapeutic settings requires a specialized skill set that can be offered by OIT. These rules are also being amended to replace old terminology with new terminology, add cross-references to other rules and laws and follow standard formatting.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0100

Child Protective Service Authority and Responsibility

Reports of alleged child abuse or neglect are received by Child Welfare and screened for Department response. The processes and time lines for completion are provided in division 15 of this chapter of rules, and also in OAR chapter 407 division 45 for *Children's Care Providers*. OAR 413-015-0100 to 413-015-0125 provide an overview of division 15, which implements ORS 409.185, 418.015 and 419B.005 to 419B.050.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015 & 419B.005 - 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 22-2007(Temp), f. & cert. ef. 12-3-07 thru 4-11-08; CWP 2-2008, f. & cert. ef. 4-1-08

413-015-0110

Introduction to Rules Governing Child Protective Services

The rules of this division are organized as follows:

(1) Introduction to Child Protective Services, OAR 413-015-0100 to 413-015-0125.

(2) Screening, OAR 413-015-0200 to 413-015-0225.

(3) Cross Reporting, OAR 413-015-0300 to 413-015-0310.

(4) Child Protective Services Assessment, OAR 413-015-0400 to 413-015-0485.

(5) Day Care Facility Investigation, OAR 413-015-0520 to 413-015-0565.

(6) Child Abuse Assessment Dispositions, OAR 413-015-1000.

(7) Access to LEDS in Local Child Welfare Offices, OAR 413-015-1100 to 413-015-1125.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 2-2008, f. & cert. ef. 4-1-08

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413-015-0115

Definitions

Unless the context indicates otherwise, these terms are defined for use in OAR chapter 413, division 15:

(1) "Caregiver" means a guardian, legal custodian, or other person acting in loco parentis, who exercises significant authority over and responsibility for a child.

(2) "Child" means a person under 18 years of age.

(3) "Child abuse or neglect" means any form of abuse, including abuse through neglect and abuse or neglect by a third party, of a person under age 18.

(4) "Child protective services (CPS)" means a specialized social service program that the Department provides on behalf of children who may be unsafe after a report of child abuse or neglect is received.

(5) "Child protective services assessment" means activities and interventions that identify and analyze safety threats, determine if there is reasonable cause to believe child abuse or neglect occurred, and assure child safety through protective actions or ongoing safety planning.

(6) "Child protective services supervisor (CPS supervisor)" means an employee of Child Welfare trained in child protective services and designated as a supervisor.

(7) "Child protective services worker (CPS worker)" means an employee of Child Welfare who has completed the mandatory Department training for child protective service workers.

(8) "Child Safety Meeting" means a facilitated meeting held at the conclusion of a CPS assessment for the purpose of developing an ongoing safety plan.

(9) "Children's Care Provider (CCP)" means a CAF 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.

(10) "Day Care Facility" means each of the following:

(a) A Registered Family Child Care Home, which is the residence of a provider who has a current Family Child Care Registration at that address and who provides care in the family living quarters.

(b) A Certified Family Child Care Home, which is a child care facility located in a building constructed as a single family dwelling that has certification to care for a maximum of 16 children at any one time.

(c) A Certified Child Care Center, which is certified to care for 13 or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling.

(d) A Listed Facility, which is a child care provider who is exempt from CCD licensing and who receives subsidy payments for child care on behalf of clients of the Department of Human Services.

(11) "Department" means the Department of Human Services, Child Welfare.

(12) "Department response" means how the Department intends to respond to information that a child is unsafe after a report of alleged abuse or neglect is received.

(13) "Designated medical professional" means (as defined in ORS 418.747(8)) a physician, physician assistant, or nurse practitioner who has been designated by the local multi-disciplinary team and trained to conduct child abuse medical assessments (as defined in ORS 418.782), and who is — or who may designate another physician, physician assistant, or nurse practitioner who is — regularly available to conduct these medical assessments.

(14) "Face-to-face" means an in-person interaction between individuals.

(15) "FACIS" means the Family and Child Information System.

(16) "Former foster child" means a person under 21 years of age, who was in substitute care in Oregon, including substitute care provided by the Federally Recognized Tribes, after the age of 14 and remained in substitute care for an accumulative 180 days or longer.

(17) "Guided Assessment Process (GAP)" is a tool used to document the CPS assessment.

(18) "Harm" means any kind of impairment, damage, detriment, or injury to a child's physical, sexual, emotional, or mental development or functioning. Harm is the result of child abuse or neglect and may vary from mild to severe.

(19) "ICWA" means the Indian Child Welfare Act.

(20) "Initial contact" means the first face-to-face contact between a CPS worker and a family. The initial contact includes face-to-face contact

with the alleged child victim, his or her siblings, parent or caregiver, and other children and adults living in the home; accessing the home environment; identifying safety threats; and determining if a protective action is needed.

(21) "Legal guardian" means a person or agency having the powers and responsibilities of a parent to make binding decisions for a child, including the authority to:

(a) Authorize surgery for the child;

(b) Authorize enlistment in the armed forces;

(c) Consent to the child's adoption when the child is in the permanent custody of the agency; and

(d) Make other decisions of substantial legal significance concerning the child (but a guardian is not a conservator of the child's property or estate).

(22) "Multi-disciplinary team (MDT)" means a county investigative team described in ORS 418.747 that includes law enforcement personnel, child protective service workers, district attorneys, school officials, health department staff, and juvenile department personnel.

(23) "Observable" means specific, definite, real, can be seen and described. Observable does not include suspicion and gut feeling.

(24) "OIT" means Department of Human Services, Office of Investigations and Training.

(25) "Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more safety threats to which the child is vulnerable and determined the parent or caregiver is unable or unwilling to protect the child. An ongoing safety plan can be in-home or out-of-home and is adjusted when necessary to provide the least intrusive interventions.

(26) "Out of control" means family behaviors, conditions, or circumstances that can affect a child are unrestrained, unmanaged, without limits or monitoring, not subject to influence or manipulation within the control of the family, resulting in an unpredictable and chaotic family environment.

(27) "Personal representative" means a person who is at least 18 years of age and is selected to be present and supportive during the CPS assessment by a child who is the victim of a person crime as defined in ORS 147.425 and is at least 15 years of age at the time of the crime. The personal representative may not be a person who is a suspect in, party or witness to, the crime.

(28) "Private child-caring agency" is defined by the definitions in ORS 418.205, and means a "child caring agency" that is not owned, operated, or administered by any governmental agency or unit.

(a) A "child-caring agency" means an agency or organization providing:

(A) Day treatment for disturbed children;

(B) Adoption placement services;

(C) Residential care, including but not limited to foster care or residential treatment for children;

(D) Outdoor youth programs as defined in OAR 413-215-0911; or

(E) Other similar services for children.

(b) A child-caring agency does not include residential facilities or foster care homes certified or licensed by the Department under ORS 443.400 to 443.455, 443.830, and 443.835 for children receiving developmental disability services.

(29) "Protective action" means an immediate, same day, short-term plan sufficient to protect a child from a safety threat in order to allow completion of the CPS assessment.

(30) "Protective capacity" means behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe.

(31) "Protective custody" means custody authorized by ORS 419B.150.

(32) "Reasonable suspicion" means a reasonable belief given all of the circumstances, based upon specific and describable facts, that the suspicious physical injury may be the result of abuse. Explanation: The belief must be subjectively and objectively reasonable. In other words, the person subjectively believes that the injury may be the result of abuse, and the belief is objectively reasonable considering all of the circumstances. The circumstances that may give rise to a reasonable belief may include, but not be limited to, observations, interviews, experience, and training. The fact that there are possible non-abuse explanations for the injury does not negate reasonable suspicion.

(33) "Referral" means a report that has been assigned for the purpose of CPS assessment.

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(34) "Report" means an allegation of child abuse or neglect provided to Child Welfare that the screener evaluates to determine if it constitutes a report of child abuse or neglect as defined in ORS 419B.005.

(35) "Reporter" means an individual who makes a report.

(36) "Safe" means there is an absence of safety threats, the child is not vulnerable to identified safety threats, or there is sufficient parent or caregiver protective capacity to protect the vulnerable child from the identified safety threats.

(37) "Safety service provider" means a participant in a protective action or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety or increasing the protective capacities of the child's parent or caregiver.

(38) "Safety services" mean the actions, assistance, and supervision provided by safety service providers to manage the identified safety threats to a child.

(39) "Safety threat" means family behavior, conditions, or circumstances that could result in harm to a child.

(40) "Screener" means a Child Welfare employee with training required to provide screening services.

(41) "Screening" means the process used by a screener to determine the Department response when information alleging abuse or neglect is received.

(42) "Severe harm" means 'substantial', as used in ORS 419B.005; immobilizing impairment; life-threatening damage; or significant or acute injury to a child's physical, sexual, psychological, or mental development or functioning.

(43) "Substance" means any controlled substance as defined by ORS 475.005, prescription medications, over the counter medications, or alcoholic beverages.

(44) "Suspicious physical injury" (as defined in 2007 OL Ch. 674) includes, but is not limited to:

- (a) Burns or scalds;
- (b) Extensive bruising or abrasions on any part of the body;
- (c) Bruising, swelling, or abrasions on the head, neck, or face;
- (d) Fractures of any bone in a child under the age of three;
- (e) Multiple fractures in a child of any age;
- (f) Dislocations, soft tissue swelling, or moderate to severe cuts;
- (g) Loss of the ability to walk or move normally according to the child's developmental ability;
- (h) Unconsciousness or difficulty maintaining consciousness;
- (i) Multiple injuries of different types;
- (j) Injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or
- (k) Any other injury that threatens the physical well-being of the child.

(45) "Third-party abuse" means abuse by a person who is not the child's parent, not the child's caregiver or other member of the child's household, and not a person responsible for the child's care, custody, and control. Examples of persons who could be considered as a third-party under this definition include school personnel, day-care providers, coaches, and church personnel.

(46) "Unsafe" means there is a safety threat to which the child is vulnerable and there is insufficient parent or caregiver protective capacity to protect a vulnerable child from the identified safety threats.

(47) "Vulnerable child" means a child who is unable to protect him or herself. This includes a child who is dependent on others for sustenance and protection. A vulnerable child is defenseless, exposed to behavior, conditions, or circumstances that he or she is powerless to manage, and is susceptible and accessible to a threatening parent or caregiver. Vulnerability is judged according to physical and emotional development, ability to communicate needs, mobility, size, and dependence.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 147.425, 409.185, 418.005, 418.015, 418.747, 419B.005 - 419B.050, 2007 OL 674

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 19-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; CWP 14-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 16-2007(Temp), f. & cert. ef. 10-16-07 thru 4-11-08; CWP 22-2007(Temp), f. & cert. ef. 12-3-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08; CWP 2-2008, f. & cert. ef. 4-1-08

413-015-0205

Screening Activities

The screener must complete the following activities:

(1) Gather information. When gathering information, the screener must do both of the following:

(a) Accept reports of child abuse and neglect regardless of where the child resides or where the alleged child abuse or neglect may have

occurred. If the report is about a child that does not reside in the county where the report is received, the screener must forward the report to the local child welfare office in the county or state where the child resides. The screener must forward the report on the same day the report is received and confirm that the report has been successfully forwarded.

(b) Accept and handle anonymous reports of child abuse and neglect in the same manner as other reports, gather the same information from the anonymous reporter as the screener would from any other reporter, and encourage the reporter to provide identifying information.

(2) If appropriate, refer the person to community services and resources.

(3) Determine the type of information received, Child Protective Services, Family Support Services, or Interstate Compact on the Placement of Children, and where and when to document the information received.

(a) Child Protective Services. This type of information is related to reports of child abuse or neglect.

(A) Child Protective Services information is documented in FACIS using the Guided Assessment Process (GAP).

(B) The time line for screeners to complete and document their actions, and document information gathered, unless a CPS supervisor grants the screener an extension as provided in OAR 413-015-0220, is:

(i) Immediately when a within 24 hours response time line is assigned;

(ii) Within the same day when a within five days response time line is assigned; or

(iii) No later than the next working day after the screening determination is made when the report is closed at screening.

(b) Family Support Services. This type of information is not a report of alleged child abuse or neglect, and it does not include information that indicates a child is unsafe.

(A) This information is documented in FACIS using a screening form.

(B) The time line for screeners to complete and document their actions, and document information gathered is within two days of receiving the request for services.

(C) Family Support Services information falls within one of the categories described below:

(i) Request for Placement — Information falls within this category when:

(I) A parent or legal guardian requests out-of-home placement of their child due solely to obtain services for the emotional, behavioral, or mental disorder or developmental or physical disability of the child;

(II) The parent or legal guardian requests the Department take legal custody of their child; or

(III) The court has ordered a pre-adjudicated delinquent into the care of the Department.

(ii) Request for Independent Living Program Services — Information falls within this category when a former foster child qualifies for Independent Living Program (ILP) services, is not a member on an open case, and requests to enroll in the Department's ILP.

(iii) Request for Post Legal Adoption and Post Guardianship Services — Information falls within this category when a family requests post legal adoption or post guardianship services, if the adoption or guardianship occurred through the Department.

(iv) Request for Voluntary Services — Information falls within this category when it does not meet the criteria in subparagraphs (i), (ii), or (iii) of this paragraph, a parent or caregiver requests assistance with a child in the home, and all of the following apply:

(I) Other community resources have been utilized and determined to be ineffective.

(II) Members of the extended family and other responsible adults who are well known to the child have been explored or utilized and determined to be unsafe, unavailable, unwilling, or ineffective as support for the family.

(III) The parent or caregiver is temporarily or will be temporarily unable to fulfill parental responsibilities due to a diagnosed medical condition or a mental health diagnosis.

(IV) The parent's or caregiver's inability to fulfill parental responsibilities is temporary and immediate, and will be alleviated with short term services or short term services will transition the family to community services.

(V) A Child Welfare program manager approves the request for voluntary services.

(c) Request for Interstate Compact on the Placement of Children (ICPC) supervision and services. This type of information is not a report of child abuse or neglect. Information falls within the ICPC category when a

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screeener receives a request from central office to provide ICPC supervision and services. This information is documented in FACIS using a screening form.

(4) When the screener receives Child Protective Services information, the screener must complete the screening activities described below.

(a) The screener must use the GAP screening template to collect the following information, which is critical to effectively identify if there is a report of child abuse or neglect as defined in ORS 419B.005 and if the information alleges that behavior, conditions, or circumstances could result in harm to the child:

(A) The type of alleged child abuse or neglect and the circumstances surrounding the report;

(B) How the alleged child abuse or neglect or the surrounding circumstances are reported to affect the safety of the child;

(C) Information that identifies how the child is vulnerable; and

(D) Reported parent or caregiver functioning and behavior.

(b) After completing and documenting the information required in subsection (a) of this section, if the report is an allegation of child abuse or neglect that occurred in a Children's Care Provider (CCP), the screener will immediately do the following:

(A) When the report is new information on an open Child Welfare case, the screener must:

(i) Notify the CPS supervisor;

(ii) Notify each assigned case worker and their respective supervisors of all new information received on the same day the information is received, and document this notification in FACIS case notes; and

(iii) Complete notification on the same day the information is received.

(B) Send an e-mail to the OIT screener to let them know that a FACIS screening report has been assigned to their workload.

(C) Pend the screening information to the OIT screener's workload. OIT then follows the screening procedures set forth in OAR chapter 407 division 045. CPS screening activities for CCP referrals are complete at this point and additional screening activities in this rule do not apply.

(c) Gather information from individuals who can provide firsthand information necessary to determine the appropriate Department response. This may include individuals who have regular contact with the child, doctors or others who have evaluated or maintain records on the child, people who are in an established personal or professional relationship with the parent or caregiver and who can judge the quality and nature of the parent or caregiver behavior, and those who have records or reason to know things about the parent or caregiver as a result of their involvement with or exposure to the parent or caregiver.

(d) Research Department history of every identified child, parent, caregiver, and household member for information about current or previous Department involvement relevant to the current child abuse or neglect report. If the research reveals an "unable to locate" disposition that has not been assessed, the screener must reference that referral number and those allegations in the current referral summary.

(e) Inquire regarding possible Indian or Alaskan Native heritage (for further direction *see* OAR 413-015-0215(5)).

(f) Request relevant information when available and appropriate from law enforcement agencies (LEA), including domestic disturbance calls, arrests, warrants, convictions, restraining orders, probation status, and parole status.

(g) Determine the location and corresponding law enforcement jurisdiction of the family's residence and the site where the alleged child abuse or neglect may have occurred.

(h) Immediately comply with Child Welfare Policy I-B.2.2.3 when information is related to a Department approved and certified home that is a foster home, relative caregiver home, or adoptive home.

(i) Immediately comply with Child Welfare Policy II-E.1, "Child-Caring Agencies", OAR 413-210-0000 to 413-210-0250 when information is related to a licensed child caring agency.

(j) Immediately comply with the Child Welfare "Fatality Protocol" when information is related to the death of a child.

(5) Explain to reporters:

(a) That the Department will not disclose the identity of the reporter unless disclosure is to an LEA for purposes of investigating the report, disclosure is required because the reporter may need to testify as a witness in court, or the court orders the Department to disclose the identity of the reporter;

(b) That anyone making a report of child abuse or neglect in good faith, who has reasonable grounds to make the report, is immune from liability in respect to making the report and the contents of the report;

(c) The Department's decision about whether the report will be assigned for a CPS assessment. If this decision has not been made when the report is completed, the screener must notify the reporter that, if contact information is provided, diligent efforts will be made to contact him or her at a later date and inform him or her of the decision;

(d) If applicable, that the information reported does not meet the screening criteria to be documented and retained in the child abuse information system; and

(e) That mandatory reporters should consider maintaining a record of their report to document compliance with ORS 419B.010 and 419B.015.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.020

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 22-2007(Temp), f. & cert. ef. 12-3-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08; CWP 2-2008, f. & cert. ef. 4-1-08

413-015-0415

CPS Assessment Activities

The required CPS assessment activities are outlined below. The activities are described in a logical order in these rules, but the order in which they occur is controlled by the specific circumstances in a given case.

(1) Review Records.

(a) The assigned CPS worker must:

(A) Thoroughly review the documentation in the referral;

(B) Thoroughly review the paper and electronic records maintained by Child Welfare for historical information on the family and the child that may be useful in completing the CPS assessment;

(C) Thoroughly review available Self Sufficiency records; and

(D) Make diligent efforts to contact another state's child welfare agency to obtain records, if any, when the CPS worker has information that the family has lived in another state.

(b) The CPS worker must review the documents to identify information related to:

(A) Safety threats;

(B) History or a pattern of abuse or neglect;

(C) Child and family support systems and protective capacity; and

(D) Worker safety.

(2) Addressing Prior "Unable to Locate" Dispositions that Have Not Been Assessed.

The assigned CPS worker must include the "unable to locate" allegations in the current assessment and complete the following:

(a) Discuss the unassessed allegations during interviews;

(b) Consider all information in the safety analysis; and

(c) Document the consideration of these allegations in interviews, observations, and dispositional findings.

(3) Contact Collateral Sources.

(a) The CPS worker must contact collateral sources who can clarify or supplement the information in the referral and in records already reviewed.

(A) The CPS worker must contact the assigned self sufficiency worker, if any.

(B) The CPS worker may contact other collateral sources including, but not limited to:

(i) Individuals who have regular contact with the child;

(ii) Doctors or others who have evaluated or maintain records on the child;

(iii) People who are in an established personal or professional relationship with the parent or caregiver and who can judge the quality and nature of the parent or caregiver behavior; and

(iv) People who have records or information about the parent or caregiver as a result of their involvement with, or exposure to, the parent or caregiver.

(b) The CPS worker must gather information from collateral sources throughout the CPS assessment.

(c) The CPS worker must:

(A) Protect the identity of collateral sources to the extent possible.

(B) Consult with the district attorney or the assistant attorney general to obtain a court order for records from a collateral source, if the source is unable or unwilling to share information with Child Welfare.

(4) Consult with CPS Supervisor.

(a) The CPS worker must consult with a CPS supervisor or designee:

(A) When the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of any program, office, or division of the Department or Oregon Youth Authority (OYA);

(B) When a referral involves the home of a Department certified foster parent or relative caregiver;

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(C) When a referral involves allegations that child abuse or neglect occurred in a licensed child caring agency;

(D) Prior to a decision to place a child in protective custody, or after placement if consultation before placement will delay the safety intervention;

(E) Prior to initiating court action, or after initiating court action if consultation before will delay the safety intervention;

(F) When the referral involves a child fatality;

(G) When making dispositions in complicated or sensitive situations or cases;

(H) When closing an assessment with the disposition of "unable to locate"; or

(I) Prior to a decision to close a case during or at the end of the CPS assessment.

(b) Subject to the discretion of the CPS supervisor, the CPS worker will consult with a CPS supervisor or designee at additional key points during the assessment, such as:

(A) Before making initial contact with the family; or

(B) When a referral indicates potential danger to the worker.

(5) Contact and Work with Other Entities.

The CPS worker may need to work with representatives of other entities to develop a sufficient protective action or ongoing safety plan, to analyze safety threats, and to complete the CPS assessment.

(a) The CPS worker may, as appropriate, notify or consult with other Department programs or other agencies, including but not limited to the Office of Vocational Rehabilitation Services and Animal Control.

(b) The CPS worker must contact and work with other entities as follows:

(A) Child Care Division. The CPS worker must notify and coordinate with the Child Care Division when a report involves a registered day-care home or a licensed day-care center, as required by ORS 418.747(2)(e) and 419B.020(1).

(B) Oregon Youth Authority (OYA). The CPS worker must notify OYA when the allegation involves an OYA certified foster home.

(C) Seniors and People with Disabilities Division (SPD).

(i) The CPS worker must notify the Office of Investigations and Training with the Department when the allegation involves a child with developmental disabilities in an SPD licensed group home.

(ii) The CPS worker must make a report to the Office of Investigations and Training with the Department when the CPS worker has reasonable cause to believe:

(I) That any person 18 years of age or older with a mental illness or a developmental disability whom the CPS worker comes into contact with, while acting in an official capacity, has suffered abuse.

(II) That any person with whom the CPS worker comes into contact, while acting in an official capacity, has abused a person 18 years of age or older with a mental illness or developmental disability.

(iii) The CPS worker must make a report to SPD when the CPS worker has reasonable cause to believe:

(I) That any person 65 years of age or older with whom the CPS worker comes into contact, while acting in an official capacity, has suffered abuse.

(II) That any person with whom the CPS worker comes into contact, while acting in an official capacity, has abused a person 65 years of age or older.

(D) Child Caring Agency Licensing Program. The CPS worker must notify the Department's Child Caring Agency Licensing Program when the allegation involves a licensed child caring facility.

(E) Indian Tribes. If the CPS worker knows or has reason to know that the child is an Indian child, the CPS worker must give notice within 24 hours to the Indian child's tribe that a CPS assessment is being conducted unless the screener documented completion of this notification in the referral.

(F) Probation and Parole. The CPS worker must contact probation and parole when the allegation involves a parent or caregiver, or alleged perpetrator who is supervised by probation or parole.

(G) Law Enforcement. If the screener did not cross report, the CPS worker must contact one or more law enforcement agencies in accordance with the protocols of the local MDT agreement and in accordance with cross reporting rules, OAR 413-015-0300 to 413-015-0310. When there is a joint response involving a CPS worker and LEA staff, the CPS worker is still responsible for all of the activities necessary to complete a CPS assessment which are summarized in OAR 413-015-0400. Whenever possible, the CPS worker must coordinate assessment activities with LEA in the following situations:

(i) Presence of danger. When the CPS worker has information that indicates that the child is unsafe right now.

(ii) Family cooperation. When the CPS worker has information that the family may not allow the CPS worker to observe the alleged victim or other children in the home.

(iii) Protective custody. When the CPS worker has information that a child may need to be placed in protective custody.

(iv) Child interview. When the CPS worker and the LEA officer must each interview a child, it is preferable to coordinate the interviews to reduce the number of interactions with the child.

(v) Worker safety. When the CPS worker has information that indicates the family behavior, circumstances, or situation could pose a danger to the CPS worker.

(vi) Crime committed. When the CPS worker suspects or receives a report that a crime may have been committed.

(H) Public or Private Schools. The CPS worker may interview a child at school when the worker believes it will be the best environment in which to assure a child's safety when making contact with the child. ORS 419B.045 provides requirements for CPS investigations that are conducted on school premises. The CPS worker must do following:

(i) Notify the school administrator that a CPS assessment must be conducted. If the school administrator is a subject of the CPS assessment, then notification is not required.

(ii) Report to the school office, provide identification, inform school personnel of the CPS assessment, and provide the name of the child to be interviewed.

(iii) Request information from school personnel regarding the disabilities of the child, if any, prior to an interview with the affected child.

(iv) Interview the child out of the presence of other persons, unless the CPS worker believes the presence of a school employee or other person would facilitate the interview. If the CPS worker believes that a school employee does not need to be present, but the school employee insists on being present during the interview, the worker should confer with the CPS supervisor for assistance in handling the situation.

(v) Discuss further actions with the child at the conclusion of the interview.

(vi) Inform school personnel when the interview has been completed.

(vii) Inform school personnel if the child is taken into protective custody.

(viii) Inform school personnel that the CPS worker will notify parents of the interview.

(ix) Contact the CPS supervisor if school officials refuse to allow the assessment to take place on school property.

(I) Multi-Disciplinary Teams (MDTs). Department district managers must develop interagency agreements regarding assessment of child abuse and neglect, as necessary, with local MDTs. Requirements for MDT protocols are set out in ORS 418.747.

(6) Obtain Interpreters and Translation.

The CPS worker must obtain the services of a competent interpreter and competent written translation service for families, including hearing-impaired family members, who have limited or no means of communicating in or reading English.

(7) Determine ICWA Status and Comply with ICWA, if Applicable.

The CPS worker must initiate the process to determine the child's ICWA status and notify the Indian child's tribe if ICWA applies. To initiate this process, the CPS worker must:

(a) Complete a form CF 1270, "Verification of ICWA Eligibility," to assist in determining ICWA eligibility.

(b) Contact the child's tribe when an Indian child is the subject of a CPS assessment. Federally recognized tribes must be notified within 24 hours after information alleging abuse or neglect is received by Child Welfare.

(c) If the Indian child is enrolled or eligible for enrollment in a federally recognized tribe, notify the child's tribe if the child may be placed in protective custody.

(d) Consult with the local Department ICWA liaison, a supervisor, or the ICWA manager if the worker has questions regarding the involvement of a tribe or the ICWA status of a child.

(e) Make a diligent attempt to address the following when determining the placement resource:

(A) Contact the Tribe's social services department;

(B) Search for relative resources;

(C) Search for available Indian homes; and

(D) Contact other Indian tribes and other Indian organizations with available placement resources; and

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(f) Unless the Indian child's tribe has established a different order of preference, comply with the ICWA placement preference, which is:

(A) Placement with a member of Indian child's extended family.

(B) Placement with a foster family that is licensed, approved or specified by the Indian child's tribe.

(C) Placement with an Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(D) Placement with an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(8) Determine Refugee Status and Comply with the Refugee Children Act, if applicable.

During a CPS assessment, the CPS worker must consider whether the child is a refugee child. Under ORS 418.925, a "refugee child" is a "person under 18 years of age who has entered the United States and is unwilling or unable to return to the person's country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group or political opinion."

(a) If it appears that a child is a refugee child:

(A) The CPS worker must ask about the child or parents' country of origin, length of time the child or parents have been in the United States, and the reasons why the child or parents came to the United States. The CPS worker does not have to make a legal determination that the child and parent are refugees, but if the child or the parents indicate they are refugees, then the CPS worker must proceed as if they are, until or unless it is known that they are not refugees.

(B) The CPS worker is not required to determine whether the child is a refugee child, but if the child appears to be a refugee child the CPS worker must proceed as if they are, until or unless it is known that the child is not a refugee child.

(b) The CPS worker may not take a refugee child into protective custody unless, in addition to the other requirements for taking a child into custody, the CPS worker determines that:

(A) Removal is necessary to prevent imminent serious emotional or physical harm to the child; and

(B) Reasonable efforts to alleviate the harm through remedial or preventive services do not alleviate the harm, have failed, or are not practical in an emergency situation.

(c) No refugee child may remain in placement more than five days unless there has been a judicial determination, supported by clear and convincing evidence that:

(A) Preventative or remedial services provided by the Department have failed to alleviate the need for removal; and

(B) Return to the home will likely result in psychological or physical damage to the child.

(d) When a refugee child is placed in care, the juvenile court petition must include, in addition to the information required by ORS 419B.809, the following information:

(A) A specific and detailed account of the circumstances that led the Department to conclude that the child was in imminent danger of serious emotional or physical harm;

(B) Specific actions the Department has taken or is taking to alleviate the need for removal;

(C) Assurance that the Department has complied with placement preferences listed in ORS 418.937 and listed in subsection (e) of this section; and

(D) Assurance that the Department is making or has made diligent efforts to locate and give notice to all affected refugee family members and to the Refugee Child Welfare Advisory Committee that the petition has been filed.

(e) The CPS worker must consider the refugee child's culture and tradition when making any placement decision for a refugee child and, unless shown to be inappropriate and inconsistent with the best interests of the child, place the child with the following in order of preference:

(A) Natural parents.

(B) Extended family member.

(C) Members from the same cultural heritage.

(D) Persons with knowledge and appreciation of the child's cultural heritage.

(f) The CPS worker may determine that placement under subsection (e) of this section is inappropriate and inconsistent with the best interests of the child if:

(A) The preferred placement presents safety threats to the child;

(B) The extreme medical, physical, or psychological needs of the child cannot be met in the placement; or

(C) There is an informed request from either of the child's biological parents not to use a placement, if the request is consistent with stability, security, and the individual needs of the child.

(g) The CPS worker must staff the case with the Refugee Child Welfare Advisory Committee (RCWAC). The CPS worker must contact the Cultural Competency Coordinator for Child Welfare to arrange a time for the staffing. In preparation for the staffing, the CPS worker must:

(A) Invite the CPS supervisor to the staffing; and

(B) Be prepared to discuss the reasons for the CPS referral, the information indicating that family members are refugees, and their country of origin.

(9) Take Photographs.

The CPS worker must, during the CPS assessment, take photographs and document, as necessary, child abuse, neglect, and observable safety threats.

(a) As provided in ORS 419B.028, a law enforcement officer or the CPS worker may take photographs for the purpose of documenting the child's condition at the time of the CPS assessment.

(b) As provided in ORS 419B.028, if a law enforcement officer conducting an investigation or the CPS worker conducting a CPS assessment of an allegation of child abuse or neglect under ORS 419B.020 observes a child who has suffered suspicious physical injury and the law enforcement officer or CPS worker has a reasonable suspicion that the injury may be the result of abuse, the law enforcement officer or CPS worker, in accordance with the protocols and procedures of the county multi-disciplinary team described in ORS 418.747, will immediately photograph or cause to have photographed the suspicious physical injuries:

(A) During the assessment of a new allegation of abuse, each time, during the assessment, an injury is observed that was not previously observed by a person conducting the assessment; and

(B) Regardless of whether the child has previously been photographed or assessed during an assessment of an allegation of abuse.

(c) When a child is photographed pursuant to subsection (b) of this section:

(A) The person taking the photographs or causing to have the photographs taken must, within 48 hours or by the end of the next regular business day, whichever occurs later:

(i) Provide hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format to the designated medical professional; and

(ii) Place hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format in the child welfare record labeled with the case name, case number, sequence number, person letter, child's name, and date taken.

(B) If a county multidisciplinary team staffing of the case is held, photographs of the injury will be made available to each team member involved in the case staffing at the first meeting regarding the child's case.

(d) The CPS worker must document injuries, hazardous environments, and any observable safety threats in the assessment narrative by use of photographs, written description, or illustrations.

(e) Photographs of the anal or genital region may be taken only by medical personnel.

(10) Obtain Medical Assessment.

The CPS worker must, during the CPS assessment as required in this section, facilitate a medical assessment of the child and obtain the child's medical history when necessary to assure child safety, determine treatment needs, reassure the child and family, or assist in analyzing safety threats.

(a) When the CPS worker determines that the child is in need of a medical assessment as part of a CPS assessment, the CPS worker must consult with a CPS supervisor as soon as possible, but not at the expense of delaying medical treatment.

(b) If a person conducting an assessment under ORS 419B.020 observes a child who has suffered suspicious physical injury and the person has a reasonable suspicion that the injury may be the result of abuse, the person must, in accordance with the protocols and procedures of the county multi-disciplinary team described in ORS 418.747, ensure that:

(A) A designated medical professional conducts a medical assessment within 48 hours of the observation of the suspicious physical injury, or sooner if dictated by the child's medical needs; or

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(B) An available physician conducts a medical assessment if, after reasonable efforts to locate, a designated medical professional is not available to conduct a medical assessment within 48 hours. The CPS worker is required to document in FACIS efforts to locate the designated medical professional when an available physician is used.

(c) The CPS worker must facilitate an assessment by a medical professional if the alleged child abuse or neglect involves injury to the anal or genital region.

(d) When there are indications of severe physical trauma to the child, the CPS worker must make arrangements to immediately transport the child to a medical facility, which may include calling 911. The CPS worker must also make arrangements for medical examination of a child for mild or moderate physical trauma.

(e) To make arrangements for the medical examination of a child, the CPS worker must do the following, unless completing the action would delay medical treatment for the child:

(A) Discuss with the parent or caregiver the need for medical examination or treatment.

(B) Ask the parent or caregiver to take the child to a medical facility for a medical examination or treatment.

(C) Request that the parent sign a form DHS 2099, "Authorization for Use and Disclosure of Information."

(D) Contact an LEA immediately and seek a juvenile court order to obtain protective custody of the child for the purpose of obtaining a medical examination or treatment when:

(i) The parent or caregiver refuses to obtain needed medical examination or treatment;

(ii) The parent or caregiver may flee with the child;

(iii) Delaying medical examination or treatment could harm the child; or

(iv) The CPS worker has reason to believe medical examination will reveal evidence of child abuse or neglect.

(E) Immediately seek medical care and consultation when the child may have a life-threatening condition, or a deteriorating condition that may become life-threatening.

(F) As soon as possible and not later than 24 hours after learning of the exposure, make arrangements to have the child tested for chemical exposure to harmful substances when there is reason to believe a child has been exposed to dangerous chemicals such as those found in a chemical drug lab.

(f) When a report of suspected medical neglect of an infant with a disability and with life-threatening conditions is referred for CPS assessment, the assigned CPS worker must comply with Child Welfare Policy I-B.2.2.2, "Investigation of Suspected Medical Neglect-Infants", OAR 413-030-0600 to 413-030-0650.

(g) When it is medically indicated to subject a child in the custody of the Department to HIV testing, the CPS worker must comply with Child Welfare Policy I-B.5.1, "HIV Testing of Children in Custody and HIV Confidentiality", OAR 413-040-0400 to 413-040-0450.

(h) As provided in ORS 147.425, a child who is the victim of a person crime and is at least 15 years of age at the time of the abuse may have a personal representative present during a medical examination. If a CPS worker believes that a personal representative would compromise the CPS assessment, a CPS worker may prohibit a personal representative from being present during the medical examination.

(i) When the CPS worker is assessing a CPS allegation of medical neglect, the CPS worker must consult with a health care professional as part of the assessment.

(11) **Obtain Psychological and Psychiatric Evaluations.**

(a) The CPS worker must make a referral for a psychological or psychiatric evaluation of the parent, caregiver, or child by a mental health professional to assure child safety, determine treatment needs, or assist in analyzing safety threats when during the CPS assessment the CPS worker identifies a specific condition or behavior that requires additional professional evaluation. This includes but is not limited to:

(A) Unusual or bizarre forms of punishment;

(B) Mental illness;

(C) Suicidal ideation;

(D) Homicidal ideation; or

(E) Unusual or bizarre child or parental behavior that is indicative of emotional problems.

(b) The CPS worker must obtain consent of the parent or caregiver prior to making a referral for a psychological or psychiatric evaluation of the parent, caregiver, or child, unless the evaluation is court ordered.

Stat. Auth.: ORS 418.005

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

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07; CWP 16-2007(Temp), f. & cert. ef. 10-16-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08; CWP 2-2008, f. & cert. ef. 4-1-08

413-015-0420

Make Initial Contact

The CPS worker must make an initial contact within the assigned response time line.

(1) To make an initial contact, the CPS worker must:

(a) Have face-to-face contact with and interview the alleged victim, his or her siblings, and other children living in the home. The purpose of the face-to-face contact and interview with the alleged victim, his or her siblings, and other children living in the home is to gather information regarding possible child abuse and neglect, assess if the children are vulnerable to identified safety threats, and assess the children's immediate safety. If it is not possible during the initial contact for the CPS worker to make a face-to-face contact with and interview the siblings or other children living in the home, the CPS worker must document why contact was not made and must complete the face-to-face contact and interview as soon as possible.

(b) Interview and observe children as follows:

(A) The CPS worker must notify parents of the intent to interview a child, unless notification could compromise the child's safety or a criminal investigation.

(B) The CPS worker must make diligent efforts to contact the child at home, school, day care, or any other place where the worker believes the child may be found. If the CPS worker is unsuccessful, the CPS worker must document in the assessment activities section of the GAP all attempts made to contact the child and the dates of those attempted contacts.

(C) When the CPS worker contacts the child at home and the parent or caregiver is not present:

(i) The CPS worker must consult with a CPS supervisor and seek assistance from LEA if the referral indicates that: there may be severe harm or threat of severe harm to the child; there is reasonable cause to believe the child's health or safety is endangered by the conditions of the dwelling; or the child is inadequately supervised and there is an immediate need to evaluate the child's health and safety.

(ii) The CPS worker must wait until the parent is present in the home to complete a child interview in the home if the referral does not indicate severe harm or threat of severe harm to the child or if there is not reasonable cause to believe the child's health or safety is endangered by the conditions of the dwelling or that the child is inadequately supervised.

(D) When the CPS worker is denied access to the child or to the child's residence, the CPS worker must:

(i) If the referral indicates that the child may be unsafe, request assistance from LEA in assessing the situation and in taking the child into protective custody if needed.

(ii) If the referral indicates that the child is presently safe, the CPS worker must do the following:

(I) Attempt to contact other persons who may have relevant information regarding the referral;

(II) Persist in attempts to gain cooperation from the family or caregivers, depending on the known child safety information; and

(III) Seek LEA assistance.

(iii) Consult with the CPS supervisor, the district attorney, assistant attorney general, or the county juvenile department to discuss possible juvenile court action; or

(iv) Seek a protective custody order from the juvenile court.

(E) The CPS worker must notify the parents or caregivers the same day a child is interviewed. If the same day notification could make a child or adult unsafe, a CPS supervisor may authorize an extension for one day to allow a planned notification that is less likely to compromise safety. The CPS worker must document the supervisory approval and an explanation describing the basis for the approval.

(F) The CPS worker must conduct interviews in a manner that assures privacy for the child.

(G) If the parent or caregiver is the alleged perpetrator or if the presence of the parent or caregiver might impede the interview, the CPS worker must attempt to interview children outside the presence of their parents or caregivers.

(H) A CPS worker must allow a child who is the victim of a person crime as defined in ORS 147.425 and is at least 15 years of age at the time of the abuse to have a personal representative be present during an interview. If a CPS worker believes that the personal representative would com-

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promise the CPS assessment, the CPS worker may prohibit a personal representative from being present during the interview.

(I) The CPS worker must observe the child's injuries or signs of neglect. The CPS worker may need to remove a child's clothing to make adequate observations. In that event, the CPS worker must:

- (i) Use discretion and make the child as comfortable as possible.
- (ii) Seek parental consent and assistance, when possible and appropriate.
- (iii) Consider requesting a worker or other support person, who is the same gender as the child, be present to serve as a witness and provide comfort for the child.

(J) The CPS worker may observe injuries to a child's anal or genital region if the child is not school aged and if the injury can be observed without the CPS worker touching the child's anal or genital region.

(c) Have face-to-face contact with and interview the non-offending parent or caregiver and all adults living in the home. The purpose of this face-to-face contact and interview is to find out what the non-offending parent or caregiver and other adults living in the home know about the alleged child abuse or neglect, gather information related to the safety of the child, and gather information to determine if the parent or caregiver can or cannot and will or will not protect the child. If it is not possible during the initial contact for the CPS worker to make face-to-face contact with and interview the non-offending parent or caregiver and other adults living in the home, the CPS worker must document why the contact was not made and must complete the face-to-face contact and interview as soon as possible.

(A) Whenever practicable, the CPS worker must interview both parents and caregivers in person, as follows:

- (i) Interview each person individually;
- (ii) Ask questions about domestic violence in separate interviews only; and
- (iii) Provide all adults living in the home with a written notice that a criminal records check may be conducted on them.

(B) The CPS worker must provide the parent or caregiver with a "What you need to know about a Child Protective Services assessment" pamphlet, which includes written information regarding the CPS assessment process, including the court process and the rights of the parent and caregiver.

(C) The CPS worker must interview the non-custodial legal parent during the CPS assessment. This is not required during the initial contact, but must be completed as part of the assessment process because the non-custodial parent may have essential information or be a placement resource. If the interview of the non-custodial legal parent may make a child or adult unsafe, a CPS supervisor may authorize an exception to this requirement based on written documentation that supports the conclusion that an interview with a non-custodial legal parent should not be conducted.

(d) Have face-to-face contact with and interview the alleged perpetrator. Except as provided in this subsection, the CPS worker must make face-to-face contact with and interview the alleged perpetrator during the initial contact when he or she is the child's custodial parent, caregiver, any person living in the home, or is present in the home when the CPS worker makes contact. The purpose of this interview is to evaluate the alleged perpetrator's reaction to allegations of abuse or neglect as well as to the child and his or her condition, and to gather further information about the alleged perpetrator and the family in relation to the safety of the child.

(A) The CPS worker is not required to make face-to-face contact with or interview the alleged perpetrator during the initial contact if:

- (i) The alleged perpetrator is not a custodial parent, caregiver, anyone living in the home, or is not present in the home when the CPS worker makes contact. The CPS worker still must interview the alleged perpetrator, but may complete the interview during the course of the CPS assessment; or
- (ii) There is a criminal investigation and the interview cannot be coordinated with an LEA within the time lines for initial contact.

(B) The decision not to interview an alleged perpetrator as provided in subparagraphs (A)(i) or (ii) of this subsection must be approved by a CPS supervisor, and the CPS worker must document both the approval and the reason for not completing the interview.

(C) When interviewing the alleged perpetrator, the CPS worker must:

- (i) Coordinate the interviews of the alleged perpetrator with LEA when law enforcement is conducting an investigation;
- (ii) Consult with a CPS supervisor if an interview with the alleged perpetrator could make a child or adult unsafe;
- (iii) Provide the alleged perpetrator with a written notice that a criminal records check may be conducted on them; and

(iv) Make inquiries about the employment status of the alleged perpetrator. If the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of any program, office, or division of the Department or OYA, the CPS worker must notify a CPS supervisor. The CPS supervisor must confirm the person's employee status by contacting a Central Office Field Services representative. If the CPS supervisor determines the alleged perpetrator is an employee of the Department or OYA, the CPS supervisor must notify the Department Office of Human Resources at the time of the assessment and at the time the assessment is reviewed as required in OAR 413-015-0475. The CPS supervisor must document the notifications in FACIS.

(D) When interviewing an alleged perpetrator who is the parent or caregiver, the CPS worker must provide the parent or caregiver with a "What you need to know about a Child Protective Services assessment" pamphlet, which includes written information regarding the CPS assessment process, including the court process and the rights of the parent and caregiver.

(e) Gather safety-related information through interviews and observation.

(A) The CPS worker must gather relevant information and facts necessary to complete all parts of the CPS assessment. The CPS worker must gather information through interview and observation about the following:

- (i) The extent of the child abuse or neglect;
- (ii) The circumstances surrounding the child abuse or neglect;
- (iii) Child functioning;
- (iv) Adult functioning;
- (v) Parenting practices and skills; and
- (vi) Disciplinary practices.

(B) Interview. If possible, family members should be interviewed separately in the following order, using information gathered from one interview to assist in the next interview:

- (i) Alleged victim.
- (ii) Siblings and other children in the home.
- (iii) Non-offending parents and caregivers, including all of the non-offending adults in the home.
- (iv) Non-custodial legal parent.
- (v) Alleged perpetrator.

(C) The CPS worker must, to the extent possible, do the following during interviews with family members:

- (i) Present identification to the family at the beginning of the interview and provide a business card or other document to the parents and caregivers containing the CPS worker's name and phone number.
- (ii) Clearly state the reason for the interview, provide statutory authority to assess reports of child abuse and neglect, and give an explanation of the alleged child abuse or neglect.
- (iii) Allow the parent or caregiver to respond to each allegation.
- (iv) Assure the privacy of the persons being interviewed.
- (v) Focus the interview on the safety of the children.
- (vi) Assess whether the parents or caregivers are involved in domestic violence.

(vii) Summarize and discuss the initial impressions and intentions resulting from the interview with appropriate family members or caregivers.

(viii) Obtain from the parents or caregivers the names of persons who can provide additional information in determining child safety and completing the CPS assessment.

(ix) Ask the parents and caregivers to sign an authorization to release information to enable Child Welfare to obtain confidential information from physicians, mental health providers, school employees, or other service or treatment providers.

(x) Inform the parents and caregivers about the Child Welfare grievance procedure.

(D) Observation. The CPS worker must observe the identified child, parent or caregiver, and the home environment. Specific areas for observation are:

- (i) Physical condition of the child, including any observable effects of child abuse or neglect;
- (ii) Emotional status of the child, including mannerisms, signs of fear, and developmental status;
- (iii) Reactions of the parents or caregivers to the Department concerns;
- (iv) Emotional and behavioral status of the parents or caregivers during the interviewing process;
- (v) Interactions between family members, including verbal and body language;

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(vi) Condition of the child's living space, including where the child sleeps; and

(vii) Physical condition of the home.

(f) Determine if there is a safety threat.

During the initial contact, the CPS worker must determine, based on the information obtained at that time, if there is a safety threat to the child.

(A) To determine that there is a safety threat, the CPS worker must analyze the information gathered and conclude that:

(i) A specific, observable, describable family behavior, condition, or circumstance is present; and

(ii) The specific, observable, describable family behavior, condition, or circumstance reasonably could result in harm to a child.

(B) If the CPS worker determines during the initial contact that there is no safety threat and the child is safe, then the CPS worker must continue the activities required to sufficiently complete the CPS assessment.

(C) If the CPS worker determines there is a safety threat to the child, the CPS worker must determine if, because of the safety threat, the child is unsafe and a protective action is required. The CPS worker must then continue the activities required to sufficiently complete the CPS assessment.

(g) Determine if the child is unsafe.

If the CPS worker determines, based on the available information, that there is a safety threat to the child, the CPS worker must determine if the safety threat makes the child unsafe.

(A) To assess the child's safety, the CPS worker must analyze the information gathered, and

(i) Determine if the child is vulnerable to harm resulting from the identified family behavior, condition, or circumstance, as described in OAR 413-015-0425.

(ii) Determine if the child's parent or caregiver can or cannot and will or will not protect the child from harm resulting from the identified family behavior, condition, or circumstance, as described in OAR 413-015-0430.

(B) If the CPS worker determines that the child is not vulnerable to harm resulting from the identified safety threat, then the child is safe and the CPS worker must continue the activities required to sufficiently complete the CPS assessment.

(C) If the CPS worker determines that the child's parent or caregiver can and will protect the child from harm resulting from the identified safety threat, then the child is safe. The CPS worker must continue the activities required to sufficiently complete the CPS assessment.

(D) If the CPS worker determines that the child is vulnerable to the identified safety threat and the child's parent or caregiver cannot or will not protect the child from harm resulting from the identified safety threat, the child is unsafe and the CPS worker must initiate a protective action as described in OAR 413-015-0435. The CPS worker must then continue the activities required to sufficiently complete the CPS assessment.

(2) Documentation of the Initial Contact. The CPS worker must document the dates of the initial contact using the GAP. The CPS worker must document attempted and successful contacts.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 147.425, 409.185, 418.005, 418.015, 418.747, 418.785, 419B.005 to 419B.050, 2007 Or. Laws ch. 674

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07; CWP 16-2007(Temp), f. & cert. ef. 10-16-07 thru 4-11-08; CWP 2-2008, f. & cert. ef. 4-1-08

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

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

Adm. Order No.: SSP 7-2008(Temp)

Filed with Sec. of State: 3-21-2008

Certified to be Effective: 3-21-08 thru 9-17-08

Notice Publication Date:

Rules Amended: 461-145-0080

Subject: OAR 461-145-0080 about the treatment of child support and cash medical support in the Department's public assistance, medical and food stamp programs is being amended to state the Department's policy on how child support and cash medical support is counted for on-going eligibility and benefit determination for Temporary Aid for Needy Families (TANF) clients in the State Family Pre-SSI/SSDI Program (SFPSS) and for TANF clients for whom

deprivation is based on the unemployment or underemployment of both parents.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-145-0080

Child Support and Cash Medical Support

(1) Child support and cash medical support paid by a non-custodial parent for a dependent child or minor parent in the *financial group* (see OAR 461-110-0530) are considered income of the dependent child or minor parent, whether the support is paid voluntarily or in accordance with an order to pay child support.

(2) In the ERDC program, child support is considered countable unearned income if it is received by the *financial group* or is countable under OAR 461-145-0280. Otherwise it is excluded.

(3) In the FS program, child support and cash medical support are treated as follows:

(a) Child support payments the group receives that must be assigned to the Department to maintain TANF eligibility are excluded, even if the group fails to turn the payments over to the Department.

(b) Child support payments received by a *filing group* (see OAR 461-110-0370) with at least one member working under a TANF JOBS Plus agreement are excluded, except it is considered countable unearned income in the calculation of the wage supplement.

(c) All other child support is considered countable unearned income.

(d) Cash medical support is considered countable unearned income except to the extent it is used to reimburse (see OAR 461-145-0440) an actual medical cost.

(e) Payments made by a non-custodial parent to a third party for the benefit of the *financial group* are treated in accordance with OAR 461-145-0280.

(4) In the MAA, MAF, REF, REFM, SAC, and TANF programs:

(a) In determining eligibility, except for clients working under a TANF JOBS Plus agreement, child support received by the Division of Child Support is considered countable unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.

(b) For clients working under a TANF JOBS Plus agreement:

(A) Child support is excluded in determining countable income.

(B) Child support is excluded when calculating the TANF portion of the benefit equivalency standards.

(C) All child support paid directly to the client is considered countable unearned income in the calculation of the wage supplement.

(c) All other child support payments paid directly to the *financial group* or to a third party on behalf of a member of the *financial group* is considered countable unearned income.

(d) Cash medical support is excluded in determining countable income.

(5) In the OHP program:

(a) Child support paid directly to the *financial group* or paid to a third party for the benefit of the *financial group* is considered countable unearned income.

(b) Cash medical support is excluded.

(6) In the OSIP, OSIPM, and QMB programs, all child support and cash medical support paid to the *financial group* are considered countable unearned income. Child support and cash medical support paid by the *financial group* are not deductible from income.

(7) Notwithstanding section (4) of this rule, for on-going eligibility and benefit determination for clients in the SFPSS program:

(a) Child support is considered countable unearned income.

(b) Cash medical support is excluded in determining countable income.

(c) Payments made by a non-custodial parent to a third party for the benefit of the *financial group* are treated in accordance with OAR 461-145-0280.

(8) Notwithstanding section (4) of this rule, for on-going eligibility and benefit determination for TANF clients for whom deprivation is based on the unemployment or underemployment of both parents:

(a) Child support is considered countable unearned income.

(b) Cash medical support is excluded in determining countable income.

(c) Payments made by a non-custodial parent to a third party for the benefit of the *financial group* are treated in accordance with OAR 461-145-0280.

(d) Child support payments received by a *filing group* (see OAR 461-110-0370) with at least one member working under a TANF JOBS Plus

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agreement are excluded, except it is considered countable unearned income in the calculation of the wage supplement.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 418.100
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 7-2008(Temp), f. & cert. ef. 3-21-08 thru 9-17-08

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

Adm. Order No.: SSP 8-2008

Filed with Sec. of State: 4-1-2008

Certified to be Effective: 4-1-08

Notice Publication Date: 2-1-2008

Rules Amended: 461-001-0000, 461-025-0310, 461-025-0350, 461-115-0610, 461-115-0705, 461-125-0310, 461-135-0910, 461-135-1175, 461-140-0040, 461-145-0120, 461-145-0370, 461-145-0470, 461-145-0490, 461-145-0500, 461-145-0505, 461-145-0520, 461-145-0530, 461-145-0550, 461-145-0585, 461-145-0910, 461-155-0290, 461-155-0291, 461-155-0295, 461-160-0030, 461-175-0050, 461-175-0200, 461-175-0340, 461-190-0426, 461-195-0521

Rules Repealed: 461-025-0350(T), 461-145-0450(T), 461-155-0290(T), 461-155-0291(T), 461-155-0295(T), 461-175-0200(T), 461-175-0340(T)

Rules Ren. & Amend: 461-006-0452 to 461-135-0833

Subject: OAR 461-001-0000 about definitions for terms used in OAR chapter 461 is being amended to change the definition of shelter-in-kind to include shelter provided by an agency or person outside of the financial group and to clarify what constitutes shelter-in-kind. Previously, shelter-in-kind only included shelter provided by an agency or person outside of the household group. Additionally, the rule is being amended for the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) program to remove certain types of shelter and situations where no shelter is being provided from the definition of shelter-in-kind. For OSIP, OSIPM, and QMB, shelter in-kind does not automatically apply in all situations where there are no shelter costs.

OAR 461-006-0452 about the treatment of burial expenses in the Department's Estates Administration Unit is being amended and renumbered as 461-135-0833 to increase the allowance for the average cost of a plain and decent funeral to \$3,500 for those recipients of public assistance who die on or after, April 1, 2008. In addition, those funeral items not considered professional services or merchandise are being clarified. This rule is being renumbered to 461-135-0833 because currently it is the only rule in OAR chapter 461, division 006 and it is being renumbered to be adjacent to the Department's other rules used in its estate recovery process.

OAR 461-025-0310 about requests for hearings in public assistance, medical, and food stamp programs is being amended to clarify that individuals have a right to a contested case hearing when the Department has issued a notice to an employer participating in the JOBS program seeking repayment under ORS 411.892. This rule is also being amended to clarify the circumstances when a client is entitled to a hearing when the Department has not acted on a request or application for public assistance.

OAR 461-025-0350 about withdrawals of hearing requests is being amended to make permanent a temporary rule adopted on January 1, 2008, implement HB 2423 (2007 Or. Laws, ch. 288) and adjust the process that applies to a client withdrawal from contested case. This amendment specifies when an individual may withdraw a request for hearing, the actions taken after a withdrawal occurs, and how an individual may cancel a withdrawal of a request for hearing.

OAR 461-115-0610 about verification is being amended to make updates to terminology and language and to align with current pol-

icy and practice related to domestic violence verification. Program intent and practice does not require verification of the occurrence of domestic violence in any program.

OAR 461-115-0705 about required verification in the Department's Breast and Cervical Cancer Medical program (BCCM), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Extended Medical Assistance (EXT), Oregon Health Plan (OHP) and Medical Coverage for Children in Substitute or Adoptive Care (SAC) programs is being amended to make the rule consistent with the Department's policy and practice by removing EXT from the programs that require individuals to provide documentation of citizenship/identity. The Department's policy is that clients who are transitioning from the MAA or MAF program to EXT do not require a full medical redetermination so are not required to provide documentation of citizenship/identity.

OAR 461-125-0310 about the basis of need in the OSIP (Oregon Supplemental Income Program) and OSIPM (OSIP Medical) programs is being amended to clarify that the blindness, old age, or disability basis of need applies to OSIPM (as well as to OSIP) and that children are not eligible for the \$1.70 SIP payment. This rule is also being amended to remove old terminology and replace it with new terms. In addition, this rule is being amended to add cross-references to other rules and laws.

OAR 461-135-0910 about the eligibility for the Department's public assistance, medical, and food stamp programs of refugees in the Unaccompanied Minors Program is being amended to clarify the programs for which such refugees are not eligible. Currently, the rule states that such individuals are not eligible for any cash assistance program. This rule is being amended to specify that such individuals are not eligible for the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs. This rule is being amended to make it consistent with Department practice.

OAR 461-135-1175 about the Senior Farm Direct Nutrition Program (SFDNP) is being amended to clarify that the Department uses countable income to determine eligibility for the Senior Farm Direct Nutrition Program and that the Department may not issue more than one voucher per case per year. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-140-0040 about determining the availability of income in the public assistance, medical, and food stamp programs is being amended to specify that expenses incurred to secure a payment, such as Workers Compensation or damages from an accident, are not countable. This rule is also being amended to clarify that not only earned income but also unearned income that is diverted at the request of the individual who owns it is considered available income. This rule is also being amended to cross-reference to OAR 461-150-0020 for purposes of clarity. In addition, OAR 461-140-0040 is being amended to clarify that for all programs, when a client receives money that is intended and used for the care of someone that does not live with the client, the money used for the care of the person not living with the client does not count as income to the client. This rule is also being amended to clarify that income is not considered available in the Medical Assistance Assumed (MAA), Refugee Assistance (REF), Refugee Assistance Medical, (REFM), and Temporary Aid for Needy Families (TANF) programs when the income is controlled by the client's abuser, if the client is a victim of domestic violence, the client's abuser controls the income, and the abuser is not in the client's filing group.

OAR 461-145-0120 regarding the definition of earned income for the public assistance, medical, and food stamp programs is being amended to clarify that earned income includes representative payee fees.

OAR 461-145-0370 about the treatment of income from the Older Americans Act in public assistance, medical, and food stamp programs is being amended to clarify the treatment of income that is not a wage or a salary under Title V of the Older Americans Act of 1965 by specifying that payments to an individual 55 years of age and

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older under Title V of the Older Americans Act of 1965 that are not a wage or salary are excluded for all programs.

OAR 461-145-0450 about the treatment of representative payee fee payments in the public assistance, medical, and food stamp programs is being repealed. Section (1) is being incorporated into OAR 461-145-0120 and section (2) is being deleted because representative payee fees are never unidentifiable and are not intended for more than one beneficiary.

OAR 461-145-0470 about the treatment of shelter-in-kind income in the Department's public assistance, medical, and food stamp programs is being amended to change the treatment of shelter-in-kind for the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM) and Qualified Medicare Beneficiary (QMB) programs and to clarify current policy regarding the treatment of shelter-in-kind in these programs. Previously the rule required that in all situations where a client had no shelter costs the shelter-in-kind standard for total shelter applied. This rule is being amended to specify that shelter-in-kind does not apply to all situations where the client has no shelter costs. If the shelter is provided by certain nonprofit organizations or in situations where the shelter does not have any market value, the shelter is not considered shelter-in-kind. Shelter-in-kind standards only apply in situations where the client's shelter is considered shelter-in-kind as that term is defined in OAR 461-001-0000. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-145-0490 about the treatment of Social Security benefits in public assistance, medical, and food stamp programs is being amended to be consistent with federal requirements in 42 USC 405(j)(4) and Public Law 103-296. Previously, representative payee fees were excluded from countable Social Security income. This amendment makes representative payee fees countable as unearned income.

OAR 461-145-0500 is being amended to remove language that indicates that money remaining from Social Security death benefits after the payment of burial costs can be considered "periodic income" and to correct current language. The rule will add a cross-reference to OAR 461-140-0120 about treatment of lump sum income.

OAR 461-145-0505 about the treatment of spousal support in public assistance, medical, and food stamp programs is being amended to clarify how spousal support is treated. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-145-0520 about the treatment of stocks, bonds, and other securities in the public assistance, medical, and food stamp programs is being amended to clarify what is counted as a resource for stocks, bonds, and other securities. This rule is also being amended to remove a reference to hardship waivers for savings bonds, and adds a cross reference to OAR 461-145-0108 for types of resources not covered in section (1) of this rule. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-145-0530 about the treatment of tax refunds in the Department's public assistance, medical, and food stamp programs is being amended to state that any income tax refunds are counted as a resource and to update statutory references.

OAR 461-145-0550 about the treatment of unemployment compensation benefits in the Department's public assistance, medical, and food stamp programs is being amended to clarify the treatment of unemployment compensation benefits by removing a reference to monthly unemployment compensation benefits, adding a reference to disaster unemployment benefits, and adding a cross reference to the disaster assistance rule (OAR 461-145-0100). The amended rule also clarifies that retroactive payments are counted as periodic or lump sum income. This rule is also being amended to replace old ter-

minology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-145-0585 about the treatment of vocational rehabilitation payments in the Department's public assistance, medical, and food stamp programs is being amended to clarify the treatment of vocational rehabilitation payments. The treatment of vocational rehabilitation payments is being clarified by specifying that educational income that is not a training allowance or stipend is treated as provided in OAR 461-145-0150. The treatment of vocational rehabilitation payments is also being clarified by specifying that benefits from the United States Veterans Administration are treated as provided in OAR 461-145-0580. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-145-0910 about the definition and treatment of self-employment income in public assistance, medical, and food stamp programs is being amended to revise the policy on identifying self-employment by removing one criterion from a list of six, changing the criteria from meeting five out of a list of six criteria to meeting four out of a list of five criteria. The Department is also amending this rule by adding independent contractor status to the criteria for determining self-employment, and clarifying that the amount of countable income considered available is gross receipts and sales before costs. The Department is eliminating the criterion "contracts for a site or works out of another's business location." This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-155-0290, 461-155-0291, and 461-155-0295 about the income standards for the QMB-BAS, QMB-DW, and QMB-SMB programs (Qualified Medicare Beneficiaries - Basic, Disabled Worker, Special Medicare Beneficiaries) are being amended to base their income standards on the 2008 Federal Poverty Level. Currently, these rules are based on the 2007 Federal Poverty Level. These amendments will make permanent temporary rule changes planned to be adopted by March 1, 2008.

OAR 461-160-0030 about the treatment of costs in the Department's public assistance, medical, and food stamp programs is being amended to comply with federal guidance on the use of medical costs in the determination of an individual's liability as stated in the State Medicaid Manual 3701.3, published by United States Department of Health and Human Services, Centers for Medicare and Medicaid Services. This rule is being amended to clarify how medical expenses are used to calculate the long-term care liability by adding a section that provides how to determine the medical deduction in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs. This rule is being amended to codify current practice that has not previously been codified in an administrative rule.

OAR 461-175-0050 about the notice period used to determine the effective date for taking action when the Department sends a decision notice is being amended to remove a cross-reference to the computation method in the rules for the Office of Administrative Hearings.

OAR 461-175-0200 about the types of decision notices that are required in certain circumstances is being amended to implement HB 2423, 2007 Or. Laws, Ch. 288, and restate the Department's policy about amending a decision notice, when a decision notice becomes void, and when no decision notice is needed. This amendment will make permanent a temporary rule amendment from January 1, 2008. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

OAR 461-175-0340 about the type of decision notice that is required when an individual makes a voluntary decision to withdraw the individual's application or make a voluntary withdrawal or reduction in benefit amount is being amended to implement HB 2423, 2007 Or. Laws Ch. 288, make permanent a temporary rule amend-

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ed January 1, 2008, and clarify Department policy when an individual notifies the Department that the individual wishes to withdraw his or her application for benefits or wishes to reduce or to no longer receive benefits. This amendment specifies that the Department sends a basic decision notice when a client withdraws a request for benefits. This amendment also states that to voluntarily reduce or close benefits, the individual completes a voluntary agreement. This amendment also specifies that the voluntary agreement is a final order, and states the grounds and time limits to set aside the agreement.

OAR 461-190-0426 is being amended to include in rule the requirements that JOBS Plus employers must comply with to be eligible to receive JOBS Plus payments from the Department. This rule is also being amended to remove old terminology and replace it with new terms.

OAR 461-195-0521 about calculating an overpayment in the Department's public assistance, medical, and food stamp programs is being amended to remove a reference to the Department's spend down program, which has been eliminated.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-001-0000

Definitions for Chapter 461

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. In this chapter of rules, unless the context indicates otherwise:

(1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDS), or any other agency formerly part of the Department of Human Services shall be taken to mean the Department of Human Services (DHS), except that the rule in which reference occurs only regulates programs covered by Chapter 461 of the Oregon Administrative Rules.

(2) A reference to an Administrator of an agency mentioned in section (1) shall be taken to mean the Director of DHS.

(3) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of domestic violence, sexual assault, or stalking.

(4) "Adjusted income" means the amount determined by subtracting income deductions from countable income (see OAR 461-140-0010). Specific rules on the deductions are found in division 461-160.

(5) "Adoption assistance" means financial assistance provided to families adopting children with special needs. Adoption assistance may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.

(6) "Assets" mean income and resources.

(7) "Basic decision notice" means a decision notice mailed no later than the date of action given in the notice.

(8) "Budgeting" means the process of calculating the benefit level.

(9) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine eligibility and benefit level for the payment month.

(10) "Cafeteria plan" means a written benefit plan offered by an employer in which:

(a) All participants are employees; and

(b) Participants can choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Services does not consider part of an employee's gross income. Qualified benefits include, but are not limited to:

(A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);

(B) Group term life insurance plans (up to \$50,000);

(C) Dependent care assistance plans; and

(D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).

(11) "Capital asset" means property that contributes toward earning self-employment income, including self-employment income from a microenterprise, either directly or indirectly. A capital asset generally has a

useful life of over one year and a value, alone or in combination, of \$100 or more.

(12) "Caretaker" means an individual who is responsible for the care, control, and supervision of a child. The status of caretaker ends once the individual no longer exercises care, control, and supervision of the child for 30 days.

(13) "Caretaker relative" means a caretaker who meets the requirements of one of the following subsections:

(a) Is one of the following relatives of the dependent child:

(A) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.

(B) Stepfather, stepmother, stepbrother, and stepsister.

(C) An individual who legally adopts the child and any individual related to the individual adopting the child, either naturally or through adoption.

(b) Is or was a spouse of an individual listed in subsection (a) of this section.

(c) Met the definition of caretaker relative under subsection (a) or (b) of this section before the child was adopted (notwithstanding the child's subsequent adoption).

(14) "Certification period" means the period for which a client is certified eligible for a program.

(15) "Child" includes natural, step, and adoptive children. The term child does not include an unborn.

(a) In the ERDC program, a child need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:

(A) Under the age of 18; or

(B) Under the age of 19 and in secondary school or vocational training at least half time.

(b) In the GA, GAM, and OSIP programs, a child is an individual under the age of 18.

(c) In the OHP program, child means an individual, including a minor parent, under the age of 19.

(d) In the OSIPM and QMB programs, child means an unmarried individual living with a parent who is:

(A) Under the age of 18; or

(B) Under the age of 22 and attending full time secondary, post secondary or vocational-technical training designed to prepare the individual for employment.

(16) "Community based care" is any of the following:

(a) Adult foster care - Room and board and 24 hour care and services for the elderly or for disabled people 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.

(b) Assisted living facility - A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.

(c) In-home Services - People living in their home receiving services determined necessary by the Department.

(d) Residential care facility - A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.

(e) Specialized living facility - Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.

(f) Independent choices - In-home Services recipients in demonstration sites who receive a cash benefit to coordinate in-home services under a section 1115 (42 U.S.C. 1315) demonstration waiver.

(17) "Continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.

(18) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.

(19) "Custodial parents" mean parents who have physical custody of a child. Custodial parents may be receiving benefits as dependent children or as caretaker relatives for their own children.

(20) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.

(21) "Department" means the Department of Human Services (DHS).

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(22) "Dependent child", in the EXT, MAA, MAF, REF, REFM, and TANF programs, means the following:

(a) An individual who is not a caretaker relative of a child in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or

(b) A minor parent whose parents have chosen to apply for benefits for the minor parent. This does not apply to a minor parent who is married and living with his or her spouse.

(23) "Disability" means:

(a) In the FS program, see OAR 461-001-0015.

(b) In the REF, SFPSS, TA-DVS, and TANF programs, for purposes other than determining eligibility:

(A) An individual with a physical or mental impairment that substantially limits the individual's ability to meet the requirements of the program; or

(B) An individual with a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment as defined by the Americans with Disabilities Act (42 USC 12102; 28 CFR 35.104).

(24) "Domestic violence" means the occurrence of one or more of the following acts between family members, intimate partners, or household members:

(a) Attempting to cause or intentionally, knowingly or recklessly causing physical injury or emotional, mental or verbal abuse.

(b) Intentionally, knowingly or recklessly placing another in fear of imminent serious physical injury.

(c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.

(d) Using coercive or controlling behavior.

(25) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to victims of domestic violence. If the facility serves other people, a portion must be used solely for victims of domestic violence.

(26) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.

(27) "Equity value" means fair market value minus encumbrances.

(28) "Fair market value" means the amount an item is worth on the open market.

(29) "Family stability" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF program means the characteristics of a family that support healthy child development, including parental mental health, drug and alcohol free environment, stable relationships, and a supportive, flexible, and nurturing home environment.

(30) "Family stability activity" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF program means an action or set of actions taken by the client, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain family stability.

(31) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.

(32) "HPN" means a health plan new/noncategorical client eligible under OHP-OPU.

(33) "Income-producing property" means any real or personal property that generates income for the financial group. Examples of income-producing property are:

(a) Livestock, poultry, and other animals.

(b) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, condominiums.

(34) "Initial month" of eligibility means any of the following:

(a) In all programs, the first month a benefit group (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.

(b) In all programs except the FS program, the first month a benefit group is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.

(c) In the FS program:

(A) The first month for which the benefit group is certified following any period during which they were not certified to participate, except for migrant and seasonal farm workers (see OAR 461-001-0015).

(B) For migrant and seasonal farmworkers, the first month for which the benefit group is certified following any period of one month or more during which they were not certified to participate.

(d) In the OHP program, the first month of a redetermination or recertification period.

(35) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(36) "Legally married" means a marriage uniting a man and a woman according to the provisions of either:

(a) The statutes of the state where the marriage occurred;

(b) The common law of the state in which the man and woman previously resided while meeting the requirements for common law marriage in that state; or

(c) The laws of a country in which the man and woman previously resided while meeting the requirements for legal or cultural marriage in that country.

(37) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a life estate enables the owner of the life estate to possess, use and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A life estate is created when an individual owns property and then transfers their ownership to another while retaining, for the rest of their life, certain rights to that property. In addition, a life estate is established when a member of the financial group (see OAR 461-110-0530) purchases a life estate interest in the home of another individual.

(38) "Lodger" means a member of the household group (see OAR 461-110-0210) who---

(a) Is not a member of the filing group; and

(b) Pays the filing group for room and board.

(39) "Long-term care" means the system through which the Department provides a broad range of social and health services to eligible adults who are aged, blind, or have disabilities for extended periods of time. This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).

(40) "Lump-sum income" means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. Lump-sum income includes:

(a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.

(b) Income from inheritance, gifts, winnings and personal injury claims.

(41) "Marriage" means the union of a man and a woman who are legally married.

(42) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.

(43) "Minor parent", in the ERDC, EXT, MAA, MAF, REF, REFM, and TANF programs, means a parent under the age of 18.

(44) "Nonstandard living arrangement" is defined as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs, a client is considered to be in a nonstandard living arrangement when the client is applying for or receiving services in any of the following locations:

(A) A nursing facility.

(B) An intermediate care facility for the mentally retarded (ICF/MR).

(C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.

(D) A community-based setting covered by a waiver under Title XIX of the Social Security Act.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, a nonstandard living arrangement means each of the following locations:

(A) Foster care.

(B) Residential Care Facilities.

(C) Drug or Alcohol Residential Treatment Facilities.

(D) Homeless or Domestic Violence Shelters.

(E) Lodging house if paying for room and board.

(F) Correctional facilities.

(G) Medical institutions.

(45) "Ongoing month" means one of the following:

(a) For all programs except FS and OHP, any month following the initial month of eligibility, if there is no break in the program benefit of one or more calendar months.

(b) For the FS and OHP programs, any month in the certification period following the initial month of eligibility.

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(46) "Parent" means the biological or legal (step or adoptive) mother or father of an individual or unborn child.

(a) If the mother lives with a male and either she or the male claims that he is the father of the child or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.

(b) A stepparent relationship exists if:

(A) The individual is legally married to the child's biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce or death.

(c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a parent if both of the following are true:

(A) The child lives with the biological parent; and

(B) The legal parent (the adoptive parent) has given up care, control and supervision of the child.

(47) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(48) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.

(49) "Periodic income" means income received on a regular basis less often than monthly.

(50) "Primary person" for all programs except FS, means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The primary person for individual programs is as follows:

(a) For EXT, MAA, MAF, and TANF, the parent or caretaker relative.

(b) For ERDC, the caretaker.

(c) For FS, see OAR 461-001-0015.

(d) For GA, GAM, OSIP, OSIPM, and QMB, the client or their spouse.

(e) For OHP, REF, and REFM, the applicant, caretaker, caretaker relative or parent.

(51) "Qualified Partnership Policy" means a long term care insurance policy meeting the requirements of OAR 836-052-0531 that was either:

(a) Issued while the client was a resident in Oregon on January 1, 2008 or later; or

(b) Issued in another state while the client was a resident of that state on or after the effective date of that state's federally approved State Plan Amendment to issue qualified partnership policies.

(52) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.

(53) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(54) "Safe homes" mean private homes that provide a few nights lodging to victims of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.

(55) "Shelter costs" mean, in all programs except the Food Stamp program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the Food Stamp program, see OAR 461-160-0420.

(56) "Shelter-in-kind" means an agency or person outside the financial group (see OAR 461-110-0530) provides the shelter of the financial group, or makes a payment to a third party for some or all of the shelter costs of the financial group. Shelter-in-kind does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities or situations where no shelter is being provided, such as sleeping in a doorway, park or bus station.

(57) "Sibling" means the brother or sister of an individual. "Blood-related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the marriage of their parents.

(58) "Spousal support" means income paid (voluntarily, per court order or per administrative order) by a separated or divorced spouse to a member of the financial group (see OAR 461-110-0530).

(59) "Spouse" means an individual who is legally married to another individual. In the ERDC and FS programs, spouse includes an individual who is not legally married to another, but is presenting themselves to the community as the husband or wife by:

(a) Representing themselves as husband and wife to relatives, friends, neighbors or tradespeople; and

(b) Sharing living expenses or household duties.

(60) "Stable income" means income that is the same amount each time it is received.

(61) "Standard living arrangement" means a location that does not qualify as a nonstandard living arrangement.

(62) "Teen parent" means, for TANF and JOBS, a parent under the age of 20 who has not completed a high school diploma or GED.

(63) "Timely continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.

(64) "Trust funds" mean money, securities, or similar property held by a person or institution for the benefit of another person.

(65) "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.

(66) "Variable income" means earned or unearned income that is not always received in the same amount each month.

Stat. Auth: ORS 411.060, 411.070, 411.816, 414.042, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 418.040, 418.100

Hist.: AFS 28-1978, f. & ef. 7-13-78; AFS 54-1984, f. 12-28-84, ef. 1-1-85; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 8-2008, f. & cert. ef. 4-1-08

461-025-0310

Hearing Requests

(1) A claimant (see OAR 461-025-0305) has the right to a contested case hearing in the following situations upon the timely completion of a request for hearing:

(a) Except as provided in subsection (o) of this section, the Department has not approved or denied a request or application for public assistance within 45 days of the application.

(b) The Department has not acted timely on an application as follows:

(A) An application for food stamps — within 30 days of the filing date.

(B) An application for a JOBS support service payment — within the time frames established in OAR 461-115-0190(3).

(c) The Department acts to deny, reduce, close, or suspend food stamp benefits, a grant of public assistance, a grant of aid, a support service payment authorized in the JOBS program by OAR 461-190-0211, medical assistance, or child care benefits authorized under Division 160 or 165 of this chapter of rules in the ERDC or TANF child care programs. When used in this subsection, grant of public assistance and grant of aid mean the grant of cash assistance calculated according to the client's need.

(d) The Department claims that an earlier public assistance payment was an overpayment, or that an earlier issuance of food stamps was an overissuance.

(e) The claimant claims that the Department previously underissued public assistance or food stamps and the Department denies the claim.

(f) The household disputes its current level of food stamp benefits.

(g) The filing group (see OAR 461-110-0370) is aggrieved by any action of the Department that affects the participation of the filing group in the Food Stamp program.

(h) The claimant asks for a hearing to determine if the waiver of an Intentional Program Violation hearing was signed under duress.

(i) The Department establishes or changes the client's premium for the Oregon Health Plan.

(j) In the Pre-TANF program, the Department denies payment for a basic living expense (see OAR 461-135-0475) or other support service payment in the JOBS program (see subsection (c) of this section).

(k) In the TA-DVS program, when OAR 461-135-1235 provides a right to a hearing.

(l) A service re-assessment of a client conducted in accordance with OAR Division 411-015 has resulted in a reduction or termination of Nursing Home services, Home and Community Based Waivered Services (defined at OAR 411-015-0005), Spousal Pay services (see OAR 411-030-0080), or Independent Choices services (see OAR Division 411-036).

(m) The claimant's benefits are changed to vendor, protective, or two-party payments.

(n) Department has issued a notice seeking repayment under ORS 411.892 to an employer participating in the JOBS program.

(o) In the OSIP and OSIPM programs, when the Department has not approved or denied an application within the time frames established in OAR 461-115-0190.

(p) The right to a hearing is otherwise provided by statute or rule.

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(2) A client is not entitled to a hearing on the question of the contents of a case plan (defined in OAR 461-190-0151) unless the right to hearing is specifically authorized by the Department's rules. For a dispute about an activity in the JOBS program, the client is entitled to use the Department's re-engagement process (see OAR 461-190-0231). In the TA-DVS program, a dispute about the contents of a TA-DVS case plan (see OAR 461-135-1205) is resolved through re-engagement if there is no right to a hearing under OAR 461-135-1235.

(3) A request for hearing is complete:

(a) In public assistance programs, when the Department's Administrative Hearing Request form (form DHS 443) is completed and signed by the claimant or the claimant's representative and is received by the Department.

(b) In the Food Stamp program when:

(A) The Department receives the claimant's oral or written statement that he or she wishes to appeal a decision affecting the claimant's food stamp benefits to a higher authority; or

(B) The Department's Administrative Hearing Request form (form DHS 443) is completed and signed by the claimant or the claimant's representative and is received by the Department.

(c) In the case of a provider of child care, when a written request for hearing from the provider is received by the Department.

(4) In the event a request for hearing is not timely, the Department will determine whether the failure to timely file a request for hearing was beyond the reasonable control of the party and enter an order accordingly. The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness.

(5) In the event the claimant has no right to a contested case hearing on an issue, the Department may enter an order accordingly. The Department may refer a hearing request to the Office of Administrative Hearings for a hearing on the question of whether the claimant has the right to a contested case hearing.

(6) To be timely, a completed hearing request must be received by the Department not later than:

(a) Except as provided in subsection (b) of this section, the 45th day following the date of the decision notice (see OAR 461-001-0000) in public assistance and medical programs.

(b) The 90th day following the effective date of the reduction or termination of benefits in a public assistance program if the reduction or termination of aid is a result of a JOBS disqualification (see OAR 461-130-0330) or a penalty for failure to seek treatment for substance abuse or mental health (see OAR 461-135-0085).

(c) The 90th day following the date of the decision notice in the Food Stamp program, except:

(A) A filing group may submit a hearing request at any time within a certification period (see OAR 461-001-0000) to dispute its current level of benefits.

(B) A filing group may submit a hearing request within 90 days of the denial of a request for restoration of benefits if not more than twelve months has expired since the loss of benefits.

(d) The 30th day following the date of notice from the Oregon Department of Revenue in cases covered by ORS 293.250.

(e) In a case described in subsection (1)(h) of this rule, the request must be made within 90 days of the date the waiver was signed.

(7) In determining timeliness under section (6) of this rule, delay caused by circumstances beyond the control of the claimant is not counted.

(8) In computing the time periods provided by this rule, see OAR 461-025-0300(1).

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

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.095, 411.117, 411.816, 414.042, 414.055, 418.100, 418.125

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-2000, f. 1-31-2000, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 8-2008, f. & cert. ef. 4-1-08

461-025-0350

Withdrawals of Hearing Requests

(1) A *claimant* (see OAR 461-025-0305) may withdraw a request for hearing (see OAR 461-025-0305) at any time before a final order has been issued on the contested case.

(a) In the DFSP program, the withdrawal of a request for hearing must be in writing.

(b) In all programs other than the DFSP program, a claimant may withdraw a request for hearing orally or in writing.

(2) The Department or the Office of Administrative Hearings will send an order confirming the withdrawal of a hearing request to the claimant's last known address. The claimant may cancel the withdrawal in writing if received by the Department hearing representative up to the tenth work day following the date such an order is served.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100, 2007 OL Ch. 288

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 4-1995, f. & ef. 2-1-95; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; SSP 8-2008, f. & cert. ef. 4-1-08

461-115-0610

Verification; General

(1) To be eligible for benefits, clients must provide verification when the Department requests verification. Verification provided for one program is used for all programs in which the client participates. The three categories of information used in the verification process are:

(a) Documentary evidence, which is the primary source of verification for all eligibility factors except residency and household composition.

(b) Collateral contact, which is an oral or documentary confirmation of an eligibility factor by a person outside of the filing group.

(c) Observations made during a home visit by a Department representative.

(2) The Department will notify a client when verification of any factor affecting eligibility or benefit level is required.

(3) Verification of the occurrence of an act of domestic violence (see OAR 461-001-0000) is not required for any program.

Stat. Auth.: ORS 411.060, 411.816, 414.042, 418.100

Stats. Implemented: ORS 411.060, 411.117, 411.650, 411.816, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 8-2008, f. & cert. ef. 4-1-08

461-115-0705

Required Verification; BCCM, MAA, MAF, EXT, OHP, SAC

(1) This rule establishes verification requirements for the BCCM, MAA, MAF, OHP, and SAC programs in addition to the requirements of OAR 461-115-0610.

(2) Except as provided in section (3) of this rule, each client declaring U.S. citizenship must provide acceptable documentation of citizenship and identity. For purposes of this rule, acceptable documentation consists of any of the documents permitted under section 6036 of the federal Deficit Reduction Act of 2005 (Pub. L. 109-171).

(a) A new applicant must provide acceptable documentation as a condition of eligibility.

(b) A current recipient who has not already provided acceptable documentation must provide documentation at the next redetermination of eligibility.

(c) A client who has already provided acceptable documentation is not required to provide additional evidence during subsequent application for benefits or redeterminations of eligibility.

(3) All of the following clients are exempt from the requirements of section (2) of this rule:

(a) A client eligible for or receiving Medicare.

(b) A client who is assumed eligible under OAR 461-135-0010(5).

(c) A client who is presumptively eligible for the BCCM program.

(d) A client who is eligible for OHP-CHP.

(e) A client who is receiving Social Security Disability Income (SSDI).

(f) A client receiving Title IV-E benefits.

(4) In the OHP program:

(a) At initial application and at any other time it affects the client, the following must be verified:

(A) The requirement in OAR 461-120-0210 to have or apply for a social security number.

(B) Alien status for applicants who indicate they are not U.S. citizens.

(C) The premium exemption allowed because a client is:

(i) A member of a federally recognized Indian tribe, band, or group;

(ii) An Eskimo, Aleut, or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act; or

(iii) A person eligible for benefits through an Indian Health Program.

(D) Income from the past three months and income already received in the budget month. If income cannot be verified, the client's statement is accepted.

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(b) At recertification, the following must be verified, except that if income cannot be verified, the client's statement is accepted:

- (A) Unearned income if it has changed since the last certification.
- (B) Earned income from the three months prior to the budget month.
- (C) A client enrolled full time in higher education must provide verification, at application and recertification, that the client meets the requirements of OAR 461-135-1110.

(d) The following must be verified when it is first reported or changed:

(A) Pregnancy of the client, which must be verified by a medical practitioner, health department, clinic, or crisis pregnancy center or like facility.

(B) Amount of the premium for cost-effective employer-sponsored health insurance.

(e) A client must provide verification for any eligibility requirement questioned by the Department.

Stat. Auth.: ORS 409.050, 411.060 & 414.042

Stats. Implemented: ORS 411.060, 414.042 & 414.047

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; Suspended by SSP 13-2006(Temp), f. & cert. ef. 9-25-06 thru 12-31-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 8-2008, f. & cert. ef. 4-1-08

461-125-0310

Basis of Need; OSIP, OSIPM

In the OSIP and OSIPM programs, an individual must be one of the following:

- (1) Blind (see OAR 461-125-0310) at any age (AB).
- (2) Age 65 or over (see OAR 461-125-0350) (OAA).
- (3) An individual with a disability (see OAR 461-125-0370) (AD). A *child* (see OAR 461-001-0000) with a disability is not eligible for the \$1.70 SIP payment (see OAR 461-155-0250(4)).

Stat. Auth. ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 8-2008, f. & cert. ef. 4-1-08

461-135-0833

Burial Expenses

(1) The Department of Human Services has determined that a plain and decent funeral and disposition of the remains of a decedent can be arranged for an average cost of \$3,500. This cost includes all professional services and merchandise. Preparation of the remains will be done in accord with applicable laws and regulations.

(2) For individuals dying on or after April 1, 2008, where the Department of Human Services is a claimant in their estate and where there would be insufficient assets remaining after any funeral costs to satisfy the Department's claim in full, not more than \$3,500 in estate assets, less any prearranged funeral trust, funds set aside for burial, life insurance policies specifically identified to pay for funeral expenses, or burial insurance, may be expended for funeral expenses and disposition of the remains of the decedent.

(3) In instances where a pre-paid funeral plan is sought to be changed for a Medicaid client after their death, and pre-paid funeral funds are refunded, it is the responsibility of the funeral home and the recipient(s) of the funds to inform, in writing, the Department of Human Services, Estate Administration Unit, PO Box 14021, Salem, OR 97309-5024, of any refund within 30 days of such action. Any monies refunded after the client has died are an estate asset and subject to the claims of creditors.

(4) The following items are not considered professional services or merchandise and will not be allowable in meeting the plain and decent funeral standard: Transportation of the remains beyond the state of Oregon; and donations to charities in the decedent's name. The aforementioned costs are not all-inclusive and other similar charges may be denied.

Stat. Auth. ORS 410.070, 411.060, 411.070, 414.106

Stats. Implemented: ORS 411.620, 411.630, 411.708, 411.795, 414.105, 416.310, 416.340
Hist.: AFS 43-1983(Temp), f. & ef. 7-1-85; AFS 78-1985, f. & ef. 12-9-85; AFS 25-1994, f. & cert. ef. 11-1-94; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; Renumbered from 461-006-0452, SSP 8-2008, f. & cert. ef. 4-1-08

461-135-0910

Unaccompanied Minor Program; REF, REFM

Refugees who entered the United States under the Unaccompanied Minor Program administered by the federal Office of Refugee Resettlement are wards of the court and are in the custody of a public agency. They are not eligible for REF or REFM.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 10-1-90; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 8-2008, f. & cert. ef. 4-1-08

461-135-1175

Senior Farm Direct Nutrition Program

(1) The Senior Farm Direct Nutrition Program (SFDNP) provides farm direct checks to low income individuals.

(2) An individual is eligible for SFDNP if the individual meets all of the following eligibility criteria on April 1 of the calendar year in which benefits are sought:

(a) Has countable income (see OAR 461-001-0000) less than 135 percent of the Federal Poverty Level as listed in OAR 461-155-0295.

(b) Receives Medicaid or Food Stamp benefits.

(c) Is homeless or resides in their own home or rental property.

(d) Is age 60 or older.

(3) This program is funded by a grant from the United States Department of Agriculture. The Department determines the allotment amount on an annual basis, based on the grant allocation received from the United States Department of Agriculture and the number of eligible individuals.

(4) The Department may not issue more than one SFDNP allotment per participant, per year.

(5) SFDNP begins June 1 each year and ends on October 31 each year.

(6) See OAR 461-145-0190 to determine the treatment of this benefit in the eligibility process for other programs.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070

Stats. Implemented: ORS 410.070, 411.060, 411.070

Hist.: SSP 8-2006, f. & cert. ef. 6-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 8-2008, f. & cert. ef. 4-1-08

461-140-0040

Determining Availability of Income

(1) This rule describes the date income is considered available, what amount of income is considered available, and situations in which income is considered unavailable.

(2) Income is considered available the date it is received or the date a member of the financial group (see OAR 461-110-0530) has a legal right to the payment and the legal ability to make it available, whichever is earlier, except as follows:

(a) Income usually paid monthly or on some other regular payment schedule is considered available on the regular payment date if the date of payment is changed because of a holiday or weekend.

(b) Income withheld or diverted at the request of an individual is considered available on the date the income would have been paid without the withholding or diversion.

(c) An advance or draw of earned income is considered available on the date it is received.

(d) Income that is averaged, annualized, converted, or prorated is considered available throughout the period for which the calculation applies.

(e) A payment due to a member of the financial group, but paid to a third party for a household expense, is considered available when the third party receives the payment.

(f) In prospective budgeting, income is available in the month the income is expected to be received (see OAR 461-150-0020).

(3) The following income is considered available even if not received:

(a) Deemed income.

(b) In the ERDC, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, QMB, REF, REFM, and TANF programs, the portion of a payment from an assistance program, such as public assistance, unemployment compensation, or social security, withheld to repay an overpayment.

(c) In the FS program, the portion of a payment from the TANF program counted as disqualifying income under OAR 461-145-0105.

(4) The amount of income considered available is the gross before deductions, such as garnishments, taxes, or other payroll deductions including flexible spending accounts.

(5) The following income is not considered available:

(a) Wages withheld by an employer in violation of the law.

(b) Income received by another person who does not pay the client his or her share.

(c) Income received by a member of the financial group after he or she has left the household.

(d) Moneys withheld from or returned to the source of the income to repay an overpayment from that source unless the repayment is countable:

(A) In the FS program, under OAR 461-145-0105; or

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(B) In the ERDC, GA, GAM, MAA, MAF, OHP, OSIP, OSIPM, REF, REFM, and TANF programs, under subsection (3)(b) of this rule.

(e) For a client who is not self-employed, income required to be expended on an ongoing, monthly basis on an expense necessary to produce the income, such as supplies or rental of work space.

(f) Income received by the financial group but intended and used for the care of someone not in the financial group as follows:

(A) If the income is intended both for someone in the financial group and someone not in the financial group, the portion of the income intended for the care of the individual not in the financial group is considered unavailable.

(B) If the portion intended for the care of the individual not in the financial group cannot readily be identified, the income is prorated evenly among the individuals for whom the income is intended. The prorated share intended for the care of the individual not in the financial group is then considered unavailable.

(g) In the FS, MAA, MAF, OHP, REF, REFM, and TANF programs, income controlled by the client's abuser if the client is a victim of domestic violence (see OAR 461-001-0000), the client's abuser controls the income and will not make the money available to the filing group, and the abuser is not in the client's filing group.

(h) In the OSIP, OSIPM, and QMB programs, unearned income not received because a payment was reduced to cover expenses incurred by a member of the financial group to secure the payment. For example, if a retroactive check is received from a benefit program other than SSI, legal fees connected with the claim are subtracted. Or, if payment is received for damages received as a result of an accident the amount of legal, medical or other expenses incurred by a member of the financial group to secure the payment are subtracted.

(i) In the REFM program, any income used for medical or medical-related purposes.

(6) The availability of lump-sum income is covered in OAR 461-140-0120.

Stat. Auth.: ORS 409.050, 411.060, 411.816, 414.042, 418.100

Stats. Implemented: ORS 411.060, 411.117, 411.816, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 5-2005(Temp), f. & cert. ef. 4-1-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 8-2008, f. & cert. ef. 4-1-08

461-145-0120

Earned Income; Defined

Earned income is income received in exchange for an individual's physical or mental labor. Earned income includes all of the following:

(1) Compensation for services performed, including wages, salaries, commissions, tips, sick leave, vacation pay, draws, or the sale of one's blood or plasma.

(2) Income from on-the-job-training, paid job experience, JOBS Plus work experience, or Welfare-to-Work work experience.

(3) In-kind income, when a client is an employee of the person providing the in-kind income and the income is in exchange for work performed by the client.

(4) For self-employment, gross receipts and sales, including mileage reimbursements, before costs.

(5) In:

(a) The FS program, *cafeteria plan* (see OAR 461-001-0000) benefits and funds placed in a flexible spending account.

(b) All programs except the FS program, cafeteria plan benefits that an employee takes as cash as well as funds placed in a flexible spending account.

(6) Income from work-study.

(7) Income from profit sharing that the client receives monthly or periodically.

(8) The fee for acting as an individual's representative payee, as long as that individual is not included in the filing group.

(9) In the FS, OHP, OSIP, OSIPM, and QMB programs, expenditure by a business entity that substantially benefits a principal (see OAR 461-145-0088).

Stat. Auth.: ORS 409.050, 411.060, 411.816, 414.042, 418.100

Stats. Implemented: ORS 411.060, 411.816, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-

2004, f. & cert. ef. 7-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 8-2008, f. & cert. ef. 4-1-08

461-145-0370

Older Americans Act

(1) In all programs except the FS, GA, and GAM programs, benefits under Title III of the Older Americans Act of 1965 (Nutrition Program for the Elderly) are excluded. In the FS, GA, and GAM programs, these benefits are considered unearned income.

(2) In all programs except the FS program:

(a) A wage or salary paid to persons 55 years of age and older under Title V of the Older Americans Act of 1965 (Experience Works, American Association of Retired Persons, National Association for Spanish-Speaking Elderly, National Council on Aging, National Council on Black Aging, National Council of Senior Citizens, National Urban League, U.S. Forest Service) is considered earned income.

(b) Payments to an individual 55 years of age and older under Title V of the Older Americans Act of 1965 that are not a wage or salary are excluded.

(3) In the FS program, payments under Title V of the Older Americans Act of 1965 are excluded.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 8-2008, f. & cert. ef. 4-1-08

461-145-0470

Shelter-in-Kind Income

(1) Except as provided in section (2) of this rule:

(a) In the ERDC, GA, and GAM programs, shelter-in-kind (see OAR 461-001-0000) payments are excluded, except earned shelter-in-kind is not excluded in the ERDC program.

(b) In the EXT, MAA, MAF, REF, REFM, SAC, and TANF programs, except for child support (see OAR 461-145-0080 and 461-145-0280), shelter-in-kind payments are excluded.

(c) In the FS program, shelter-in-kind housing and utility payments are excluded (see OAR 461-145-0130 about exclusion of earned in-kind income), except an expenditure by a business entity for shelter costs (see OAR 461-001-0000) of a principal (see OAR 461-145-0088) is counted as income.

(d) In the OHP program, shelter-in-kind payments are excluded except an expenditure by a business entity for shelter costs of a principal is counted as income.

(e) In the OSIP, OSIPM, and QMB programs:

(A) Unearned shelter-in-kind income is treated as follows:

(i) Shelter-in-kind payments from HUD are excluded.

(ii) If the shelter-in-kind includes all housing and utilities, the Shelter-in-Kind Standard for total shelter (see OAR 461-155-0300) is counted as unearned income.

(iii) If the shelter-in-kind includes all housing (utilities are not included), the Shelter-in-Kind Standard for housing costs (see OAR 461-155-0300) is counted as unearned income.

(B) Earned shelter-in-kind income is treated as follows:

(i) If shelter is provided for services related to the employer's trade or business and acceptance of the shelter is a condition of employment, the shelter-in-kind income is treated in accordance with paragraph (A) of this subsection.

(ii) Except as provided in subparagraph (i) of this paragraph, the fair market value (see OAR 461-001-0000) of the shelter is counted as earned income.

(2) A payment for which there is a legal obligation to pay to a member of the financial group (see OAR 461-110-0530) that is made to a third party for shelter expenses of a member of the financial group is counted as unearned income.

Stat. Auth.: ORS 409.050, 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 8-2008, f. & cert. ef. 4-1-08

ADMINISTRATIVE RULES

461-145-0490

Social Security Benefits

Except for SSI (see OAR 461-145-0510) and death benefits remaining after burial costs (see OAR 461-145-0500), Social Security benefits (SSB) are treated as follows:

- (1) Monthly payments are counted as unearned income.
- (2) Except as provided in section (3) of this rule, all payments other than monthly payments are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).
- (3) In the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs:

(a) For the purposes of this section, a payment is retroactive if it is issued in any month after the calendar month for which it is intended.

(b) Retroactive payments are counted as unearned income in the month of receipt except as provided in subsection (c) of this section.

(c) When retroactive payments are made through the representative payee of an individual who is required to have a representative payee because of drug addiction or alcoholism, the retroactive payments may be required to be made in installments. If the payments are made in installments, the total of the benefits to be paid in installments is considered unearned income in the month in which the first installment is made.

(d) Any remaining amount from a retroactive payment after the month of receipt is counted as an excluded resource for nine calendar months following the month in which the payment is received. After the nine-month period, any remaining amount is a countable resource.

Stat. Auth.: ORS 411.060, 411.816, 418.100
Stats. Implemented: ORS 411.060, 411.700, 411.816, 414.042, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 39-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 8-2008, f. & cert. ef. 4-1-08

461-145-0500

Social Security Death Benefit

Money remaining from Social Security death benefits after the payment of burial costs is treated as lump-sum income (see OAR 461-140-0120).

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 418.100
Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 414.042, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 8-2008, f. & cert. ef. 4-1-08

461-145-0505

Spousal Support

(1) In the ERDC, MAA, MAF, OHP, OSIP, OSIPM, QMB, REFM, and SAC programs, spousal support (see OAR 461-001-0000) is counted as unearned income.

(2) In the FS program:

(a) Payments made by the separated or divorced spouse to a third party for the benefit of the *financial group* are excluded, except that a payment for which there is a legal obligation to pay to a member of the financial group that is made to a third party for shelter expenses of a member of the financial group is counted as unearned income.

(b) Spousal support is counted as unearned income.

(3) In the REF and TANF programs:

(a) For clients not working under a TANF JOBS Plus agreement, if the spousal support is received by the Department or Department of Justice and if continued receipt of the spousal support is reasonably anticipated, the spousal support is:

- (A) Counted as unearned income when determining eligibility; and
- (B) Excluded when determining the REF and TANF benefit amount.

(b) For clients working under a TANF JOBS Plus agreement:

(A) Spousal support is excluded in determining countable income.

(B) Spousal support is excluded when calculating the TANF portion of the benefit equivalency standards.

(C) Spousal support received by the client is counted as unearned income when calculating the wage supplement.

(c) Other spousal support payments (not covered under subsections (a) or (b) of this section) are counted as unearned income.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 418.100
Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 414.042, 418.100
Hist.: AFS 8-1992, f. & cert. ef. 4-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 8-2008, f. & cert. ef. 4-1-08

461-145-0520

Stocks, Bonds and Other Securities

(1) Except as provided in section (2) of this rule, the *equity value* (see OAR 461-001-0000) of mutual funds, and securities, including stocks,

bonds, educational savings bonds, and certificates of deposit (CDs), is counted as a resource.

(2) The value of a savings bond issued by the United States Department of the Treasury is excluded during the minimum retention period if the owner has received a denial of a request for a hardship waiver based on financial need.

(3) Interest and dividends on items covered by section (1) of this rule are treated as provided in OAR 461-145-0108.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 418.100
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 8-2008, f. & cert. ef. 4-1-08

461-145-0530

Tax Refund

For all programs, the following types of tax refunds are counted as a resource:

(1) Income tax refunds.

(2) Property tax refunds, including Elderly Rental Assistance (ERA).

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 418.100
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 8-2008, f. & cert. ef. 4-1-08

461-145-0550

Unemployment Compensation Benefit

In all programs covered by Chapter 461 of the Oregon Administrative Rules, unemployment compensation benefits are treated as follows:

(1) Retroactive payments are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(2) Disaster Unemployment Assistance is treated as provided in OAR 461-145-0100.

(3) All payments not covered under sections (1) or (2) of this rule are counted as unearned income.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 418.100
Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 414.042, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 8-2008, f. & cert. ef. 4-1-08

461-145-0585

Vocational Rehabilitation Payment

(1) Except as provided in section (2) of this rule:

(a) Vocational rehabilitation maintenance payments for food, shelter and clothing are counted as unearned income.

(b) In the Food Stamp program, a training allowance or stipend from a vocational rehabilitation program is treated as earned income. For all other programs, a training allowance or stipend is treated as unearned income.

(c) Educational income not covered under subsection (b) of this section is treated as provided in OAR 461-145-0150.

(d) Vocational rehabilitation payments for special itemized needs connected with the evaluation, planning or placement activity are treated as a reimbursement (see OAR 461-145-0440). These payments include payments for:

- (A) Child care.
- (B) Clothing.
- (C) Second residence.
- (D) Special diet.
- (E) Transportation.

(2) Benefits from the United States Veterans Administration are treated as provided in OAR 461-145-0580.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 418.100
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 8-2008, f. & cert. ef. 4-1-08

461-145-0910

Self-Employment; General

(1) Self-employment income is income resulting from one's own business, trade, or profession, rather than from a salary or wage paid by an employer. A client is considered self-employed if he or she meets the criteria in sections (2) or (3) of this rule. Except as noted in section (3) of this rule, for all programs except FS, when a client has established a corporation, determine if the client is self-employed according to section (2) of this rule. If a client has more than one self-employment business, trade, or profession, the income from each is determined separately.

(2) Except as provided in OAR 461-145-0250(1), an individual is self-employed for the purposes of this division of rules if he or she:

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(a) Is considered an independent contractor by the business that employs him or her; or

(b) Meets at least four of the following criteria:

(A) Is engaged in an enterprise for the purpose of producing income.

(B) Is responsible for obtaining or providing a service or product by retaining control over the means and manner of providing the work or services offered.

(C) Has principal responsibility for the success or failure of the business operation by assuming the necessary business expenses and profit or loss risks connected with the operation of the business, and has the authority to hire and fire employees to perform the labor or services.

(D) Is not required to complete an IRS W-4 form for an employer and is not required to have federal income tax or FICA payments withheld from a pay check.

(E) Is not covered under an employer's liability or workers' compensation insurance policy.

(3) Notwithstanding section (2) of this rule:

(a) Homecare Workers (see OAR 411-031-0020) paid by the Department are not self-employed.

(b) Child care providers (see OAR 461-165-0180) paid by the Department, adult foster home providers (see OAR 411-050-0400) paid by the Department, realty agents, and individuals who sell plasma, redeem beverage containers, pick mushrooms for sale, or engage in similar enterprises are considered to be self-employed.

(4) In the ERDC, FS, MAA, MAF, REF, and TANF programs, self-employment income, including income from a microenterprise, is counted prospectively to determine eligibility as follows:

(a) Self-employment income is annualized when it is:

(A) Received during less than a 12-month period but is intended as a full year's income.

(B) From a business that has operated for a full year and the previous year is representative of what the income and costs will be during the budget month.

(b) Self-employment income is treated as anticipated income when a financial group begins self-employment and is unable to determine what the income and costs will be during the budget month.

(5) In the GA, OSIP, OSIPM, and QMB programs, self-employment income is considered *available* upon receipt by a member of the financial group, except it is prorated over the period of work if the duration of the work exceeds one month.

(6) When determining the amount of countable self-employment income, use gross receipts and sales, including mileage reimbursements, before costs.

Stat. Auth.: ORS 411.060, 411.816, 418.040, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.040, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 5-2005(Temp), f. & cert. ef. 4-1-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 8-2008, f. & cert. ef. 4-1-08

461-155-0290

Income Standard; QMB-BAS

The adjusted income standard for the QMB-BAS program is 100 percent of the 2008 federal poverty level. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. & cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 8-2008, f. & cert. ef. 4-1-08

461-155-0291

Income Standard; QMB-DW

The adjusted income standard for the QMB-DW program is 200 percent of the 2008 federal poverty level (see OAR 461-155-0290). [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 8-2008, f. & cert. ef. 4-1-08

461-155-0295

Income Standard; QMB-SMB

The adjusted income standard for QMB-SMB is 135 percent of the 2008 federal poverty level (see OAR 461-155-0290). [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 8-2008, f. & cert. ef. 4-1-08

461-160-0030

Overview of Costs

(1) Costs incurred by the client that the client has a legal responsibility to pay are deductible from income in accordance with the rules in this division of rules.

(2) The following costs are not deductible:

(a) A cost paid by someone outside the filing group through a reimbursement, vendor payment, or in-kind benefit.

(b) A cost that is paid by a person or company outside the financial group or that is written off by a medical facility. These are referred to as third-party payments.

(c) The cost for a service provided by someone in the filing group, such as child care provided by the father while the mother works.

(d) A cost used as an income deduction in one budget month or averaged over several months cannot be used again.

(e) In the OSIPM program, a cost that the client incurred while the client was serving a disqualification from Medicaid under OAR 461-140-0210 to 461-140-0300 for a transfer of assets for less than fair market value.

(3) In the OSIP and OSIPM programs, to determine the medical deduction allowed under OAR 461-160-0620, the Department uses one of the following methods:

(a) Consider the expenses as actually incurred each month; or

(b) Consider projected medical expenses during a prospective period not to exceed six months. Base the projection on actual expenses experienced in a preceding period (not to exceed six months) and on any expenses expected to be incurred by the individual during the prospective period. Expected expenses cannot be averaged.

Stat. Auth.: ORS 411.060, 411.816, 414.042, 418.100

Stats. Implemented: ORS 411.060, 411.816, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1990, f. & cert. ef. 2-16-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 8-2008, f. & cert. ef. 4-1-08

461-175-0050

Notice Period

The notice period is used to determine the effective date for taking action when a decision notice (see OAR 461-001-0000) is sent to the filing group:

(1) For a basic decision notice (see OAR 461-001-0000), the notice period is the month in which the notice is mailed.

(2) For a continuing benefit decision notice (see OAR 461-001-0000), the notice period is the budget month from which information is used to initiate the decision notice.

(3) For a timely continuing benefit decision notice (see OAR 461-001-0000), the notice period is the month in which the mailing requirement ends. Except as provided in OAR 461-175-0206, this mailing requirement is 15 calendar days for clients in the Address Confidentiality Program (see OAR 461-001-0000) and 10 calendar days for all other clients.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 411.060, 411.730, 411.816, 418.100
Stats Implemented: ORS 411.060, 411.730, 411.816, 418.100
Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 8-2008, f. & cert. ef. 4-1-08

461-175-0200

Notice Situations; General Information

(1) In the EA program, a basic decision notice (see OAR 461-001-0000) is sent for all situations.

(2) In the FS program:

(a) A continuing benefit decision notice (see OAR 461-001-0000) is sent to cases that are recertified early to align the FS certification end date with the end date of TANF or medical benefits.

(b) A basic decision notice is sent for all other actions on applications for assistance.

(3) In the JOBS program:

(a) A basic decision notice is sent whenever a request for a support service payment is denied.

(b) No decision notice is required if request for a support service is approved.

(4) In the MAA, MAF, REF, REFM, and TANF programs, a notice approving benefits informs the client, within one month following eligibility determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS program entry.

(5) In the Pre-TANF program, a basic decision notice is sent when payment for basic living expenses is denied or when payment for other support services in the JOBS program is denied. No other notices are required for this program.

(6) In all programs except the Pre-TANF program, unless stated differently in this rule or another rule, the Department mails or otherwise provides the client with (sends) a decision notice (see OAR 461-001-0000) as follows:

(a) A basic decision notice is sent whenever an application for assistance, including retroactive medical assistance, is approved or denied or a request for a support service payment in the JOBS program is denied.

(b) A timely continuing benefit decision notice (see OAR 461-001-0000) is sent whenever benefits or support service payments authorized by OAR 461-190-0211 are reduced or closed, or the method of payment changes to protective, vendor, or two-party.

(7) In all programs:

(a) Notwithstanding any rule in Chapter 461, to the extent permitted by OAR 137-003-0530, the Department may take any of the following actions:

(A) Amend a decision notice with another decision notice or a contested case notice.

(B) Amend a contested case notice.

(C) Delay a reduction or closure of benefits as a result of a client's request for hearing.

(D) Extend the effective date on a decision notice or contested case notice.

(b) Except as provided in subsection (a) of this section or when a delay results from the client's request for a hearing, a notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice. If the notice is void, a new notice is sent to inform the financial group (see OAR 461-110-0530) of a new date on which their benefits will be reduced or closed.

(c) No decision notice is required in each of the following situations:

(A) Benefits are ended because there is no living person in the benefit group (see OAR 461-110-0750).

(B) A notice was sent, the client requested a hearing, and either the hearing request is dismissed or a final order is issued.

(C) The client has signed a voluntary agreement that qualifies as a final order under ORS 183.417(3)(b) (see OAR 461-175-0340(2)).

(d) When the Department amends a decision notice with another decision notice under subsection (a) of this section, the date of the amended notice restarts the client's deadlines to request a hearing or continuing benefits, or both.

(e) When a contested case notice extends an effective date or delays a reduction or closure, the date of the amended notice restarts a client's timeline to request continuing benefits.

(f) When a client has a pending hearing request or is receiving continuing benefits, and the Department amends a notice under this section, the client need not re-file the hearing request or renew the request for continuing benefits.

Stat. Auth.: ORS 411.060, 411.816, 414.042, 418.100
Stats. Implemented: ORS 183.417, 411.060, 411.117, 411.816, 414.042, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; SSP 8-2008, f. & cert. ef. 4-1-08

461-175-0340

Notice Situation; Voluntary Action

(1) Unless the Department chooses to proceed as described in section (2) of this rule, when the filing group states they wish to withdraw their request for benefits, or the benefit group (see OAR 461-110-0750) states they wish to reduce or to no longer receive benefits:

(a) For all programs except FS:

(A) If the request is made by phone or in person, a timely continuing benefit decision notice (see OAR 461-001-0000) is sent.

(B) If the request is signed by the primary person, another adult member of the filing group, or the authorized representative, or if the filing group states they wish to withdraw an application for benefits, a basic decision notice (see OAR 461-001-0000) is sent.

(b) For FS:

(A) If the request is made by phone to end or reduce benefits, a timely continuing benefit decision notice is sent.

(B) If the request is made in person to reduce benefits, a basic decision notice is sent.

(C) If the request to reduce benefits is signed by the primary person (see OAR 461-001-0000), another adult member of the filing group, or the authorized representative, a basic decision notice is sent.

(D) If the request to end benefits is signed by the primary person, another adult member of the filing group, or the authorized representative in the presence of a worker, no notice is required. If it is not signed in the presence of a worker, a basic decision notice is sent.

(E) If the client withdraws a signed request for benefits, a basic decision notice is sent.

(2) The Department may reduce or terminate benefits to an individual when the individual completes a voluntary agreement on a Department form used for this purpose. The Department provides the individual with a copy of the completed agreement and no other notice is required. The individual may request a hearing to set aside this agreement on the grounds of fraud, duress, or reliance on misinformation provided by the Department, subject to the time limits for hearing requests in OAR 461-025-0310.

(3) In the FS program, a timely continuing benefit decision notice is sent if the benefit group returns a signed Change Report form with information that requires a reduction or closure of benefits.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 183.417, 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; SSP 8-2008, f. & cert. ef. 4-1-08

461-190-0426

Termination of Work-Site Agreement

(1) A JOBS Plus work-site agreement may be terminated by a participant, upon request to the Department, after the client has worked for two weeks for the employer. For the third and any subsequent termination requested by the client, the client is subject to disqualification for failure to comply with the requirements of the JOBS program as provided in OAR 461-130-0325(1)(b).

(2) The Department will terminate a JOBS Plus work-site agreement if the agreement is violated by the employer or the staffing company and at the end of the month prior to the month in which a member of the eligibility group begins serving a disqualification in the Food Stamp Program.

(3) To be eligible to receive JOBS Plus payments, an employer must:

(a) Comply with its JOBS Plus work site agreement; and

(b) Make accurate statements on its voucher submissions to the Department.

(4) An employer may not accept or retain a Department payment made on the basis of an inaccurate voucher submission, even if the inaccuracy was unintentional.

(5) An employer may not accept or retain a Department payment for an individual who is no longer a JOBS Plus program participant, when the employer has notified the Department that the individual is no longer a JOBS Plus program participant.

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(6) An employer may not accept or retain a Department payment for an individual who is no longer a JOBS Plus program participant, when the Department has notified the employer that the individual is no longer a JOBS Plus program participant.

Stat. Auth.: ORS 411.060 & 411.816

Stats. Implemented: ORS 411.060

Hist.: AFS 18-1998, f. & cert. ef. 10-2-98; SSP 8-2008, f. & cert. ef. 4-1-08

461-195-0521

Special Rules for Calculation of Overpayments

This rule contains special rules for calculating an overpayment.

(1) If a client directly receives support that should be, but is not, used to reduce benefits, there is an overpayment for the amount of support the client received directly that should have been used to reduce benefits. This section does not apply if the support received makes the client ineligible for benefits.

(2) When an overpayment occurs due to the failure of a person to reimburse the Department, when required by law, for assistance (including cash medical support) furnished for a need for which that person is compensated by another source, the liability of such person shall be limited to the lesser of the following amounts:

(a) The amount of the payment from the Department; or

(b) The amount by which the aggregate sum of all payments exceeds the maximum amount payable for such need under Department rules.

(3) If a client failed to comply with the requirements of OAR 461-120-0345 relating to medical insurance, an overpayment is calculated according to this section. The client is not included in the need group (see OAR 461-110-0630) during any period in which the client failed to meet a requirement of the OAR 461-120-0345 by withholding information or giving false information. Therefore, there is an overpayment equal to the difference between the benefits the group received and the reduced amount it would have received had the client been removed from the need group.

(4) If the benefit group was categorically eligible for food stamps, there is no Food Stamp overpayment based on resources, Social Security number, or residency. A Food Stamp overpayment may exist based on incorrect income.

(a) For a group found eligible for food stamps under OAR 461-135-0505(1)(a), (b) or (c), and the actual income made the group ineligible for the related program, the group remains categorically eligible for food stamps. Benefit groups of one or two persons would be entitled to at least \$10 in food stamp benefits.

(b) For a group found eligible for food stamps only under OAR 461-135-0505(1)(d), and the actual income equals or exceeds 185% Federal Poverty Level, the group is no longer categorically eligible and the overpayment is the food stamp benefit amount.

(5) When a client receives benefits in the OSIPM program and does not pay their share of the cost of service (client liability), the overpayment consists of all payments made by the Department on behalf of the client, including but not limited to capitation payments, Medicare Part D payments, all medical expenses for that period, waived service payments (including home-delivered meals and non-medical transportation), Medicare Buy-In (if not concurrently eligible for a Medicare Savings Program such as QMB), and mileage reimbursement.

(6) Credit against an overpayment is allowed as follows:

(a) In the GA, REF, and TANF programs, a credit is allowed for a client's payment for medical services made during the period covered by the overpayment, in an amount not to exceed the Department fee schedule for the service, but credit is not allowed for an elective procedure unless it would have been authorized if requested.

(b) Credit is allowed for an underpayment of benefits.

(c) In the FS program, if the overpayment was caused by unreported earned income, verified child care costs are allowed as a credit to the extent the costs would have been deductible under OAR 461-160-0040 and 461-160-0430.

(7) Benefits paid during the notice period (see OAR 461-175-0050) are included in the calculation of the overpayment if:

(a) The client failed to report changes within the reporting time frame; and

(b) Benefits could have been adjusted in time to prevent the overpayment if the client had reported changes at any time within the reporting time frame.

(8) An overpayment is determined and calculated by assigning unreported income to the applicable budget month without averaging the unreported income. There is a rebuttable presumption that a client's earnings reported in a quarterly earnings report from the Employment Department

were received by the client in equal amounts during the months identified in the report.

(9) Earned income deductions are applied in calculating an overpayment except as follows:

(a) In the MAA, MAF, REF, and TANF programs, no earned income deduction (see OAR 461-160-0160 and 461-160-0190) is allowed for a client who, without good cause (see section (9) of this rule), did either of the following:

(A) Failed to report all earned income within the reporting time frame.

(B) Under reported earned income.

(b) In the FS program, no deduction is applied to earned income not timely reported.

(10) For the purposes of section (8) of this rule, good cause means circumstances beyond the client's reasonable control that caused the client to be unable to report income timely and accurately.

(11) When support has been retained by the Department.

(a) In the TANF program, the amount of support (other than cash medical support) retained by the Department as current reimbursement each month is added to other income to determine ineligibility. In the case of a client not eligible for TANF, the overpayment is offset by support retained by the Department as current reimbursement.

(b) In the medical programs, the amount of the cash medical support retained by the Department each month is excluded income and not used to determine eligibility for medical benefits. When a client has incurred a medical overpayment, it is offset by the amount of the cash medical support retained by the Department during each month of the overpayment.

(12) When a client has incurred an overpayment due to both an administrative error (see OAR 461-195-0501) and a client error (see OAR 461-195-0501) in the same month, the client error overpayment is calculated by determining the total overpayment for the month and subtracting from it the portion due to administrative error.

(13) In the medical programs:

(a) There is no overpayment if the client was ineligible for financial assistance but, during the period in question, would have been eligible for EXT or any other medical program.

(b) When an overpayment is caused by administrative error (see OAR 461-195-0501), there is no corresponding overpayment if the client had been eligible to receive medical benefits under EXT, GAM, MAA, MAF, OSIPM, or SAC. In such cases, the overpaid cash benefits are not counted as income in calculating eligibility for EXT, GAM, MAA, MAF, OSIPM, or SAC.

Stat. Auth.: ORS 411.060, 411.660, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.816, 418.100

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 8-2008, f. & cert. ef. 4-1-08

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

Adm. Order No.: SSP 9-2008(Temp)

Filed with Sec. of State: 4-1-2008

Certified to be Effective: 4-1-08 thru 9-26-08

Notice Publication Date:

Rules Amended: 461-145-0530

Subject: OAR 461-145-0530 about the treatment of tax refunds in the Department's public assistance, medical and food stamp programs is being amended to state the Department's policy on the treatment of Federal income tax rebates pursuant to the Economic Stimulus Act of 2008 and to make the Department's rules consistent with the provisions of the Economic Stimulus Act of 2008 by excluding income tax rebates received in the month of receipt and the following two months.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-145-0530

Tax Refund

(1) For all programs, the following types of tax refunds are counted as a resource:

(a) Income tax refunds.

(b) Property tax refunds, including Elderly Rental Assistance (ERA).

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(2) Federal income tax rebates pursuant to the Economic Stimulus Act of 2008 are excluded in the month of receipt and the following two months.
Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 418.100
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 418.100
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 9-2008(Temp), f. & cert. ef. 4-1-08 thru 9-26-08

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

Adm. Order No.: SSP 10-2008(Temp)

Filed with Sec. of State: 4-7-2008

Certified to be Effective: 4-7-08 thru 9-30-08

Notice Publication Date:

Rules Amended: 461-135-0750

Subject: OAR 461-135-0750 about the eligibility for individuals in long-term care or waived services in the Oregon Supplemental Income Program (OSIPM) is being amended to add OSIPM eligibility for certain children who meet the service eligibility standards for the Medically Involved Children's Waiver. This rule is being amended to implement the requirements of HB 2406 (2007 Oregon Laws Chapter 751) and the Medically Involved Children's Waiver.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-0750

Eligibility for Individuals in Long-Term Care or Waivered Services; OSIPM

In the OSIPM program:

(1) A client who meets requirements of section (2) of this rule is eligible for services in any of the following locations:

- (a) A nursing facility.
- (b) An intermediate care facility for the mentally retarded (ICF/MR).
- (c) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.

(d) A community-based setting covered by a waiver under Title XIX of the Social Security Act.

(2) An individual who resides in a location listed in section (1) of this rule for a *continuous period of care* (see OAR 461-001-0030) is eligible for OSIPM if the individual:

(a) Meets the eligibility requirements for the OSIPM program except that income is above the program standards;

(b) Has income at or below 300 percent of the full SSI standard; has established a qualifying trust as specified in OAR 461-145-0540(9)(c); or is eligible for the OSIPM-EPD program; and

(c) Meets one of the following eligibility standards:

- (A) The criteria in OAR 411-015-0100.
- (B) The level-of-need criteria for an ICF/MR.

(C) The service eligibility standards for medically fragile children in OAR 411-350-0010.

(D) The service eligibility standards for the CHS (Children's Intensive In-Home Services) behavioral program in OAR 411-300-0100 to 411-300-0220.

(E) The service eligibility standards for the Medically Involved Children's Waiver in Chapter 411, Division 355 of the Oregon Administrative Rules.

Stat. Auth.: ORS 411.060, 411.070, 414.042, 417.345 & 417.346
Stats. Implemented: ORS 411.060, 411.070, 414.042, 417.345, 417.346 & 417.348
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 10-2008(Temp), f. & cert. ef. 4-7-08 thru 9-30-08

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

Adm. Order No.: SSP 11-2008(Temp)

Filed with Sec. of State: 4-7-2008

Certified to be Effective: 4-7-08 thru 9-30-08

Notice Publication Date:

Rules Amended: 461-175-0200

Subject: OAR 461-175-0200 about notice requirements for general eligibility situations, is being amended to state the notice requirements for clients in the Multnomah County and Deschutes County Pre-natal CAWEM Expansion Pilot Program. This rule is being

amended to provide that no additional notice is required for clients in the Multnomah County and Deschutes County Pre-natal CAWEM Expansion Pilot Program if the woman received a combination approval and reduction notice when pilot program benefits were approved, the woman's pregnancy has since ended and the woman remains eligible for CAWEM benefits. Citizen/Alien Waived Emergent Medical (CAWEM) benefits are limited to emergent medical needs. The Pre-natal CAWEM Expansion Pilot Program provides pre-natal benefits under an amendment to Oregon's State Children's Health Insurance Program (SCHIP) to pregnant CAWEM women who would not otherwise receive pre-natal medical benefits.
Rules Coordinator: Annette Tesch—(503) 945-6067

461-175-0200

Notice Situations; General Information

(1) In the EA program, a *basic decision notice* (see OAR 461-001-0000) is sent for all situations.

(2) In the FS program:

(a) A *continuing benefit decision notice* (see OAR 461-001-0000) is sent to cases that are recertified early to align the FS certification end date with the end date of TANF or medical benefits.

(b) A *basic decision notice* is sent for all other actions on applications for assistance.

(3) In the JOBS program:

(a) A *basic decision notice* is sent whenever a request for a support service payment is denied.

(b) No decision notice is required if request for a support service is approved.

(4) In the MAA, MAF, REF, REFM, and TANF programs, a notice approving benefits informs the client, within one month following eligibility determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS program entry.

(5) In the Pre-TANF program, a *basic decision notice* is sent when payment for basic living expenses is denied or when payment for other support services in the JOBS program is denied. No other notices are required for this program.

(6) In all programs except the Pre-TANF program, unless stated differently in this rule or another rule, the Department mails or otherwise provides the client with (sends) a *decision notice* (see OAR 461-001-0000) as follows:

(a) A *basic decision notice* is sent whenever an application for assistance, including retroactive medical assistance, is approved or denied or a request for a support service payment in the JOBS program is denied.

(b) A *timely continuing benefit decision notice* (see OAR 461-001-0000) is sent whenever benefits or support service payments authorized by OAR 461-190-0211 are reduced or closed, or the method of payment changes to protective, vendor, or two-party.

(7) In all programs:

(a) Notwithstanding any rule in Chapter 461, to the extent permitted by OAR 137-003-0530, the Department may take any of the following actions:

(A) Amend a *decision notice* with another *decision notice* or a contested case notice.

(B) Amend a contested case notice.

(C) Delay a reduction or closure of benefits as a result of a client's request for hearing.

(D) Extend the effective date on a *decision notice* or contested case notice.

(b) Except as provided in subsection (a) of this section or when a delay results from the client's request for a hearing, a notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice. If the notice is void, a new notice is sent to inform the *financial group* (see OAR 461-110-0530) of a new date on which their benefits will be reduced or closed.

(c) No *decision notice* is required in each of the following situations:

(A) Benefits are ended because there is no living person in the *benefit group* (see OAR 461-110-0750).

(B) A notice was sent, the client requested a hearing, and either the hearing request is dismissed or a final order is issued.

(C) The client has signed a voluntary agreement that qualifies as a final order under ORS 183.417(3)(b) (see OAR 461-175-0340(2)).

(D) A combination approval and reduction notice was sent to a woman in the pre-natal expansion pilot described in OAR 410-120-0030, the woman received a combination approval and reduction notice when her

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pilot benefits were approved, the woman's pregnancy has since ended, and the woman remains eligible for CAWEM benefits.

(d) When the Department amends a *decision notice* with another *decision notice* under subsection (a) of this section, the date of the amended notice restarts the client's deadlines to request a hearing or continuing benefits, or both.

(e) When a contested case notice extends an effective date or delays a reduction or closure, the date of the amended notice restarts a client's timeline to request continuing benefits.

(f) When a client has a pending hearing request or is receiving continuing benefits, and the Department amends a notice under this section, the client need not re-file the hearing request or renew the request for continuing benefits.

Stat. Auth.: ORS 411.060, 411.816, 414.042 & 418.100

Stats. Implemented: ORS 183.417, 411.060, 411.117, 411.816, 414.042 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 11-2008(Temp), f. & cert. ef. 4-7-08 thru 9-30-08

**Department of Human Services,
Children, Adults and Families Division:
Vocational Rehabilitation Services
Chapter 582**

Rule Caption: Rule Amendments for Qualified Personnel, Client Travel Rates.

Adm. Order No.: VRS 3-2008

Filed with Sec. of State: 4-10-2008

Certified to be Effective: 4-10-08

Notice Publication Date: 12-1-2007

Rules Amended: 582-001-0010, 582-070-0020

Subject: These rules were originally filed on February 4 and March 3, 2008. However, due to an error in filing the March 3, 2008, two rules from the February filing were inadvertently omitted from the final rules. This filing is to reinstate the missing rules.

1. Require that substantiation of applicant's disability be made by individuals licensed or certified by the state(s) to make the Diagnosis of the individual's impairment.

2. Require that travel and lodging for required client travel be based on Federal domestic GSA domestic per diem rates.

Rules Coordinator: Ron Barcikowski—(503) 945-6734

582-001-0010

Definitions for Chapter 582

The following definitions apply to each division in chapter 582 of the Oregon Administrative Rules unless otherwise indicated:

(1) "Act" refers to the federal Rehabilitation Act of 1973, as amended (29 U.S.C. 701 et seq.).

(2) "Administrator" refers to the Administrator of the Office of Vocational Rehabilitation Services.

(3) "Applicant" refers to an individual who submits an application for vocational rehabilitation services in accordance with 34 CFR 361.41(b)(2).

(4) "Assessment for determining eligibility and vocational rehabilitation needs" refers to, as appropriate in each case:

(a) A review of existing data to determine if an individual is eligible for vocational rehabilitation services; and to assign priority for an order of selection if in effect; and

(b) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and assignment;

(c) To the extent additional data are necessary to make a determination of the employment outcomes and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual. This comprehensive assessment:

(A) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan of employment of the eligible individual;

(B) Uses as a primary source of information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements: Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection for the individual; and Information that can be provided by the individual and, if appropriate, by the family of the individual;

(C) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual; and

(D) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment;

(d) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(e) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

(5) "Assistive technology device" refers to any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

(6) "Assistive technology service" refers to any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

(a) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his or her customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

(f) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

(7) "CFR" refers to the Code of Federal Regulations.

(8) "Client Assistance Program" or "CAP" refers to a federally-funded program authorized under 34 CFR 370 that is independent of OVRs and whose purpose is to provide information, advocacy, and legal representation to individuals seeking OVRs services.

(9) "Client's Representative" refers to any person identified by the client as being authorized to speak or act on behalf of the client or to assist the client in any matter pertaining to services of OVRs, unless a representative has been appointed by a court to represent the client, in which case the court-appointed representative is the client's representative.

(10) "Community Rehabilitation Program" or "CRP" refers to:

(a) A program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

(A) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.

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(B) Testing, fitting, or training in the use of prosthetic and orthotic devices.

(C) Recreational therapy.

(D) Physical and occupational therapy.

(E) Speech, language, and hearing therapy.

(F) Psychiatric, psychological, and social services, including positive behavior management.

(G) Assessment for determining eligibility and vocational rehabilitation needs, including technicians for assessment tests.

(H) Rehabilitation technology.

(I) Job development, placement, and retention services.

(J) Evaluation or control of specific disabilities.

(K) Orientation and mobility services for individuals who are blind.

(L) Extended employment.

(M) Psychosocial rehabilitation services.

(N) Supported employment services and extended services.

(O) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(P) Personal assistance services.

(Q) Services similar to the services described in subsections (A) through (P) of this definition, including vendors who provide training, write resumes, consult on self-employment plans, assist with a self-employed business, or write PASS plans.

(b) For the purposes of this definition, the word program means an agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions. It does not include the prospective employer of the client.

(11) "Comparable services and benefits" refers to:

(a) Services and benefits that are:

(A) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

(B) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with 34 CFR 361.53; and

(C) Commensurate to the services that the individual would otherwise receive from OVRs.

(b) For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

(12) "Competitive employment" refers to work:

(a) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(b) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(13) "DHS" refers to the Oregon Department of Human Services.

(14) "Eligible individual" refers to an applicant for vocational rehabilitation services who meets the eligibility requirements of 34 CFR 361.42(a).

(15) "Employment outcome" refers to, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment, as defined in OAR 582-001-0010(12), in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(16) "Extended employment" refers to work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.

(17) "Extended services" refers to ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment and that are provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this part and 34 CFR part 363 after an individual with a most significant disability has made the transition from support provided by OVRs.

(18) "Extreme medical risk" refers to a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(19) "Family member," for purposes of receiving vocational rehabilitation services in accordance with 34 CFR 361.48(i), refers to an individual:

(a) Who either:

(A) Is a relative or guardian of an applicant or eligible individual; or

(B) Lives in the same household as an applicant or eligible individual;

(b) Who has a substantial interest in the well-being of that individual;

and

(c) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(20) "Impartial hearing officer" refers to an individual who:

(a) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education) — an individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer;

(b) Is not a member of the State Rehabilitation Council for OVRs;

(c) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(d) Has knowledge of the delivery of vocational rehabilitation services, the State plan, and the Federal and State regulations governing the provision of services;

(e) Has received training with respect to the performance of official duties; and

(f) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

(21) "Individual with a disability" refers to an individual:

(a) Who has a physical or mental impairment; and

(b) Whose impairment constitutes or results in a substantial impediment to employment; and

(c) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(22) "Individual with a most significant disability" refers to

(a) An individual who meets the criteria for supported employment under OAR 582-001-0010(43); or

(b) An eligible individual who:

(A) Has a severe mental or physical impairment that seriously limits two or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(B) Is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

(23) "Individual with a significant disability" refers to an eligible individual who does not qualify as an individual with a most significant disability as defined at OAR 582-001-0010(22); and

(a) The individual is currently receiving SSI or SSDI or requires or required a Trial Work Experience or Extended Evaluation to determine if the individual is capable of benefiting from vocational rehabilitation services in terms of an employment outcome; or

(b) The individual:

(A) Has a severe mental or physical impairment that seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(B) Is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

(24) "Integrated setting":

(a) With respect to the provision of services, refers to a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals;

(b) With respect to an employment outcome, refers to a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(25) "Maintenance" refers to monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment. Examples: The following are some examples of expenses that would meet the definition of maintenance. The examples are illustrative only, do not

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address all possible circumstances, and are not intended to substitute for individual counselor judgment:

(a) The cost of a uniform or other suitable clothing that is required for an individual's job placement or job-seeking activities.

(b) The cost of short-term shelter that is required in order for an individual to participate in assessment activities or vocational training at a site that is not within commuting distance of an individual's home.

(c) The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement.

(d) The costs of an individual's participation in enrichment activities related to that individual's training program.

(26) "Mediation" refers to the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies. Mediation under the program must be conducted in accordance with the requirements in 34 CFR 361.57(d) by a qualified and impartial mediator as defined in 34 CFR 361.5(b)(43).

(27) "OAR" refers to the Oregon Administrative Rules.

(28) "Ongoing support services," as used in the definition of "Supported employment"

(a) Refers to services that are:

(A) Needed to support and maintain an individual with a most significant disability in supported employment;

(B) Identified based on a determination by OVRS of the individual's need as specified in an individualized plan for employment; and

(C) Furnished by OVRS from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment;

(b) Must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on:

(A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

(B) If under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice monthly meetings with the individual;

(c) Consist of:

(A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(C) Job development and training;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of vocational rehabilitation services for individuals, described in 34 CFR 361.48; or

(I) Any service similar to the foregoing services.

(29) "ORS" refers to the Oregon Revised Statutes.

(30) "OVRS" refers to the Office of Vocational Rehabilitation Services.

(31) "Parent or Guardian" refers to a person or persons having legal responsibility for the overall welfare and well-being of a client under age 18 or a client who, if over age 18, is considered legally incompetent.

(32) "Personal assistance services" refers to a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

(33) "Qualified Personnel" means an individual licensed or certified by the state or an individual who maintains an equivalent licensure or cer-

tification from another state to make the diagnosis of an applicant's impairment.

(34) "Physical and mental restoration services" refers to —

(a) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(b) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(c) Dentistry;

(d) Nursing services;

(e) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(f) Drugs and supplies;

(g) Prosthetic and orthotic devices;

(h) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with State licensure laws;

(i) Podiatry;

(j) Physical therapy;

(k) Occupational therapy;

(l) Speech or hearing therapy;

(m) Mental health services;

(n) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(o) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(p) Other medical or medically related rehabilitation services.

(35) "Physical or mental impairment" refers to:

(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(b) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(36) "Post-employment services" refers to one or more of the services identified in 34 CFR 361.48 that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Post-employment services are to be provided under an amended individualized plan for employment; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, e.g., the individual's employment is jeopardized because of conflicts with supervisors or co-workers, and the individual needs mental health services and counseling to maintain the employment; to regain employment, e.g., the individual's job is eliminated through reorganization and new placement services are needed; and to advance in employment, e.g., the employment is no longer consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(37) "Provider of community rehabilitation services" refers to any CRP, business, or independent contractor that is paid by OVRS to provide any service listed in OAR 582-001-0010(10).

(38) "Qualified and impartial mediator" refers to an individual who:

(a) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a State office of mediators, or employee of an institution of higher education) — an individual serving as a mediator is not considered to be an employee of a public agency for the

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purposes of this definition solely because the individual is paid by a public agency to serve as a mediator;

(b) Is not a member of the State Rehabilitation Council for OVRs;

(c) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(d) Is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services;

(e) Has been trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements; and

(f) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings.

(39) "Rehabilitation engineering" refers to the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

(40) "Rehabilitation technology" refers to the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(41) "Severe mental or physical impairment" refers to the use of this term in the federal Rehabilitation Act of 1973, as amended.

(42) "State plan" refers to the State plan for vocational rehabilitation services submitted by OVRs under 34 CFR 361.10.

(43) "Substantial impediment to employment" refers to a physical or mental impairment that (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

(44) "Supported employment" refers to:

(a) Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities:

(A) For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

(B) Who, because of the nature and severity of their disabilities, need intensive supported employment services from OVRs and extended services after transition as described in OAR 582-001-0010(17) to perform this work; or

(b) Transitional employment, as defined OAR 582-001-0010(46), for individuals with the most significant disabilities due to mental illness.

(45) "Supported employment services" refers to ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by OVRs:

(a) For a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

(b) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(46) "Transition services" refers to a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facil-

itate the achievement of the employment outcome identified in the student's individualized plan for employment.

(47) "Transitional employment," as used in the definition of "Supported employment," refers to a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

(48) "Transportation" refers to travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems. Examples: The following are examples of expenses that would meet the definition of transportation. The examples are purely illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment.

(a) Example 1: Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any vocational rehabilitation service.

(b) Example 2: The purchase and repair of vehicles, including vans, but not the modification of these vehicles, as modification would be considered a rehabilitation technology service.

(c) Example 3: Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual's current residence.

(49) "Vocational rehabilitation services":

(a) If provided to an individual, refers to those services listed in 34 CFR 361.48; and

(b) If provided for the benefit of groups of individuals, also refers to those services listed in 34 CFR 361.49.

(50) "Vocational rehabilitation training" means skill training in which the basis and focus of the training are individualized or customized. Vocational rehabilitation training may include focus on disability related issues as those issues impact the skills training. Vocational rehabilitation training can include, but is not limited to:

(a) Supported employment;

(b) Disability and related Skills training;

(c) On the job training;

(d) One-on-one specialized business training - training provided to individuals who are working to establish their own business;

(e) Customized training — training offered by an employer to a group of individuals for the purpose of training and possibly hiring the individuals.

(51) "Vocational training" means skills training for a specific occupation.

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

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.530 & 344.550

Hist.: VRS 5-2004, f. & cert. ef. 8-5-04; VRS 2-2005, f. 4-20-05, cert. ef. 7-1-05; VRS 1-2008, f. & cert. ef. 2-4-08; VRS 2-2008, f. & cert. ef. 3-3-08; VRS 3-2008, f. & cert. ef. 4-10-08

582-070-0020

Specific Policies

Specific rules pertain to the provision of the following services:

(1) On-the-Job Training:

(a) Payment to on-the-job trainers/employers for training services will be negotiated at the lowest reasonable level and will always be considered as reimbursement for actual expenses and/or trainer time; the trainer/employer cannot expect to make a profit from such payments;

(b) Offset against client wages will be negotiated with the trainer/employer on a mutual sharing basis at the lowest reasonable level to adequately pay the client for his/her productive work efforts with the trainer/employer ultimately paying the entire wage. Total length of the training program and length of OVRs involvement in payments will be negotiated on the basis of the complexity of the training and the amount of relevant skill and knowledge the client possesses prior to entering training.

(2) Training: Educational and training services, except on-the-job training, must be purchased from public educational organizations in Oregon. Exceptions are authorized only when:

(a) No publicly-supported school provides the courses necessary for the client's needs in order to reach the vocational objective; or

(b) A client cannot utilize publicly-supported schools because of his or her disability; or

(c) OVRs's financial participation in the plan is no greater than if the client had enrolled at the nearest appropriate publicly-supported school; or

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(d) The net cost to Oregon governmental agencies is significantly less; or

(e) The training services for the client will be significantly delayed.

(3) Vocational training: Referrals for vocational training may be made only to the following schools or programs:

(a) A school that has accreditation recognized by the United States Department of Education;

(b) A school has been approved by the Oregon Student Assistance Commission through the Office of Degree Authorization to offer and confer degrees in Oregon;

(c) A community college;

(d) A state institution of higher education within the Oregon University System;

(e) The Oregon Health and Science University.

(f) A career school licensed under ORS 345.010 to 345.450

(g) An apprenticeship program that is registered with the State Apprenticeship and Training Council

(4) Client Maintenance: OVRs will only pay or provide for maintenance expenses consistent with the definition of this term at OAR 582-001-0010(25) and 34 CFR 361.5(b)(35).

(5) Clothing Purchases: Clothing purchases may be authorized if the need is a result of participation by the client in a rehabilitation program and the client does not possess sufficient financial resources to provide for these expenses. These must be appropriate in type and in a price range, comparable to clothing items normally used by persons engaged in similar rehabilitation, training or employment settings.

(6) Client/Applicant Transportation: Travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a required vocational rehabilitation service. Assistance by the Office of Vocational Rehabilitation Services (OVRs) with transportation services will be subject to the following:

(a) Where local public transportation is available and can be used by the client, any reimbursement will not exceed the public transportation rate. Use of transportation costing in excess of the least expensive mode available to the client requires written justification, by the counselor, prior to authorization (e.g., disability prevents using the least costly mode);

(b) Where public transportation is not available or cannot be used by the client due to his/her disability, reimbursement may be authorized by the counselor for use of private vehicle or other appropriate forms of transportation;

(c) Only when determined by OVRs to be the most feasible means of providing for necessary client transportation for rehabilitation services may vehicle modification be authorized. Any vehicle modification must be prior approved by the local OVRs Field Services Manager, Field Operations Manager, or Administrator (or designee), depending on the expenditure level. Administrative level approval is obtained prior to authorizing any such costs in excess of \$5,000.00 per service; vehicle modifications are subject to OVRs established policies for purchasing authorization;

(d) The field counselor will inform the client that costs associated with insurance, repair and replacement are to be managed by the client after a modification is complete;

(e) It is the policy of OVRs to not purchase vehicles; however, the Administrator of the Office of Vocational Rehabilitation Services, or the Administrator's designee, may grant an exception and furnish payment of all or part of the purchase of a motor vehicle where the conditions in OAR 582-070-0025(2) are applicable.

(f) Whenever an exception is made by OVRs allowing payment toward the cost of a motor vehicle, OVRs will require that OVRs be shown as the primary lien holder until successful case closure has been achieved. Ownership is transferred to the client only if the vehicle is needed to participate in employment, and there is a successful case closure. When client ownership is not justified based on these two criteria, the vehicle shall be repossessed and reassigned or otherwise disposed of by OVRs.

(g) When an applicant's or client's travel requires lodging and meals, payment for lodging and meals will be based on the definition of maintenance under 582-001-0010(25) and will not exceed the current federal GSA domestic per diem rates for the state in which the lodging occurred.

(A) The per diem rate used will be based on the rate for the city in which the client or applicant lodges, or the rate for the city closest to where the client or applicant lodges.

(B) Unless the client or applicant uses a personal vehicle for the needed transportation, reservations will be made through the state travel agency.

(C) If the applicant or client utilizes a service animal, OVRs may provide payment for the lodging of the service animal.

(D) In those instances in which the federal per diem rate is insufficient to cover the cost of lodging, or the applicant or client has a legitimate need for more costly lodging, payment may exceed the federal per diem rate.

(7) Community Rehabilitation Programs' Services.

NOTE: Refer also to OAR 582-010.

(a) State-wide rates are intended to pay only the anticipated cost of standard rehabilitation services. This fee schedule may be adjusted for a specific CRP to reflect non-standard types or levels of service, or statewide for standard service, if a significant increase or decrease in the actual cost of serving clients occurs;

(b) For Community Rehabilitation Programs operated under private auspices, fees may be negotiated taking into consideration costs such as buildings, staffing and equipment. For publicly owned and operated Community Rehabilitation Programs (e.g., state or county owned or operated) fees, if any, must be based upon and not exceed actual costs.

(8) Extended Evaluation: OVRs will provide only those services authorized under OAR 582-050-0005.

(9) Personal Care Assistance (PCA): Is provided only when necessary to allow client to benefit from other rehabilitation services, including evaluation, and when the client is not entitled to PCA services from another source:

(a) Client as Employer: The client, in most cases, as the employer of the PCA may be reimbursed for necessary PCA services required to participate in rehabilitation services;

(b) Third Party Vendor: Direct payment to the PCA vendor by OVRs requires prior approval by the Field Services Manager in addition to the requirements of Oregon Administrative Rules Chapter 582, Division 10;

(c) Written Contract: In most instances the client is to be the employer of his/her own personal care assistant. OVRs may assist the client to establish an appropriate written contract with the provider.

(10) Interpreter Service: Is provided only when necessary to assist the client to derive full benefit from other rehabilitation services:

(a) Limitation: To be provided by OVRs only when "comparable benefits" are not available;

(b) For the Deaf and Hearing Impaired: OVRs gives preference to using interpreters certified by the National Registry of Interpreters for the Deaf and/or one who is on the approved vendor list of the State Association of the Deaf. When deemed mutually acceptable by the client and the counselor, another interpreter may be utilized;

(c) Regional Resources: The Deaf and Hearing Impaired Access Program may be used as a resource to both clients and staff for securing interpreters.

(11) Other Support Services Providers: May be selected for specific skills needed. Where provider licenses, insurance, certificates and state or local codes are indicated OVRs reasonably attempts to assure that appropriate levels are met before authorizing services from the provider. (See OAR 582-080 for additional rules on vendor selection.)

(12) Insurance: Providers shall obtain and maintain insurance as required by law for that provider; additionally, where OVRs is providing for services, appropriate levels of personal, automobile, professional and general liability insurance may be required, depending on the type of service.

(13) Occupational Licenses, Tools and Equipment for Training and/or Employment:

(a) May be provided when required for either extended evaluation or in other plan statuses, including post employment. OVRs accepts no responsibility for client lease/rental agreements or the leased/rented items other than to reimburse the client for such prior authorized expenditures;

(b) Repossessed items will be used whenever appropriate and available;

(c) Except for personally prescribed items, title/ownership of an OVRs purchased (or jointly purchased) item is held by OVRs (or jointly with OVRs) until case closure when ownership may be transferred to the client for non-expendable items deemed by OVRs to be needed for continued success in the client's program.

(14) Land and/or Stationary Buildings: Are never purchased by OVRs as a service to an individual client. Existing buildings may be modified when necessary to enable an eligible client to attain a vocational plan goal. No permanent additions or weight bearing partitions are to be erected as services to individuals.

(15) Moving Expenses: May be provided for training or employment only when it has been determined by OVRs that it is less costly and/or more beneficial than having the client commute. OVRs retains the right to deny reimbursement for client opted commuting/moving costs in excess of the least costly alternative.

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(16) Rehabilitation Technology Services (RTS): May be applied at any time during rehabilitation services to address barriers to the client's participation in evaluation, training, and employment:

(a) Approved Vendors: OVRs ensures that providers used by OVRs are qualified in the areas of engineering skills and/or technology required for a given service. Selected Community Rehabilitation Programs' Approvals may include RTS, when State Standards for Approvals are met for RTS;

(b) Authorization of: RTS is not conditioned upon unavailability of Comparable Benefits or Services, but all reasonably available comparable services shall be used before authorizing expenditure by OVRs. Personal services contracts for RTS require Field Services Manager approval prior to implementation.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730

Hist.: VRD 1-1978, f. 3-14-78, ef. 3-15-78; VRD 2-1992, f. & cert. ef. 4-20-92; VRD 4-1993, f. & cert. ef. 11-1-93; VRD 1-1996(Temp), f. 2-26-96, cert. ef. 3-1-96; VRS 1-2003, f. & cert. ef. 9-23-03; VRS 2-2003, f. & cert. ef. 12-31-03; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2008, f. & cert. ef. 2-4-08; VRS 2-2008, f. & cert. ef. 3-3-08; VRS 3-2008, f. & cert. ef. 4-10-08

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

Rule Caption: Prenatal coverage for CAWEM women pilot in Multnomah and Deschutes Counties under SCHIP program.

Adm. Order No.: DMAP 7-2008(Temp)

Filed with Sec. of State: 3-17-2008

Certified to be Effective: 4-1-08 thru 9-15-08

Notice Publication Date:

Rules Adopted: 410-120-0030

Subject: The General Rules Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to clients. DMAP temporarily adopted 410-120-0030 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. Early prenatal care positively influences healthy outcomes for both mother and child to mitigate adverse outcomes of high-risk pregnancies and is an accepted standard of care. Lack of access to prenatal care may result in increased risk at birth and in infancy for children, and may result in increased costs of medical care to the state. This pilot will be operated under an amendment to Oregon's State Children's Health Insurance Program (SCHIP) plan. Oregon anticipates receiving federal approval for the pilot project, effective April 1, 2008. Temporary rulemaking permits the provision of prenatal care and labor and delivery services under the pilot project in accordance with that date. Text may be revised to improve readability and take care of necessary "housekeeping" corrections.

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 (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 dur-

ing 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

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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 8-2008

Filed with Sec. of State: 3-27-2008

Certified to be Effective: 3-27-08

Notice Publication Date: 3-1-2008

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. DMAP amended rule 410-141-0520 to adopt by reference the interim modifications and technical changes made to January 1, 2006 Oregon Health Services Commission's Prioritized List of Health Services (Prioritized List) based on approval from Centers for Medicare and Medicaid Services (CMS) on October 1, 2007; and to adopt by reference the current biennial Prioritized List effective January 1, 2008 for January 1, 2008 through December 31, 2009, including interim modifications and technical changes made for 2008 national code sets, based on CMS approval dated October 31, 2007.

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. This rule incorporates by reference the January 1, 2006 Prioritized List, with technical revisions effective October 1, 2007, including expanded definitions and practice guidelines that are available on the HSC website. Effective January 1, 2008, this rule incorporates by reference the CMS approved Biennial January 1, 2008–December 31, 2009 Prioritized List, including technical revisions, expanded definitions, and practice guidelines.

(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) The January 1, 2006 Prioritized List, with technical revisions effective October 1, 2007, is in effect and condition/treatment pairs through line 530 are funded.

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(5) Effective January 1, 2008, the January 1, 2008–December 31, 2009 Prioritized List, with technical revisions, 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

Rule Caption: Federal requirement for tamper resistant prescription pads, and changes to prior authorization for below the line conditions.

Adm. Order No.: DMAP 9-2008

Filed with Sec. of State: 3-31-2008

Certified to be Effective: 4-1-08

Notice Publication Date: 3-1-0108

Rules Amended: 410-121-0040, 410-121-0145, 410-121-0147

Subject: The Pharmaceutical Services administrative rules govern the Division of Medical Assistance Programs (DMAP) payment for certain services. Rule 410-121-0040 is amended for prior authorization changes adopted by DMAP from Drug Utilization Review (DUR) Board recommendations, prior authorization for Lupron, and some clarification of existing prior authorization policy. DMAP is required to implement federal rules for the use of tamper resistant prescription pads for written, non-electronic prescriptions. Rule 410-121-0145 is amended to specify the new federal requirements for tamper resistant prescription pads for outpatient medications. Rule 410-121-0147 is amended to eliminate reimbursement for written non-electronic prescriptions that do not meet the federal requirements for tamper resistant prescription pads.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0040

Prior Authorization Required for Drugs and Products

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 will 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.: 409.050, 404.110, 414.065, Other: 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, Chapter 7, Subchapter 19). Public Law 93 -638. Section 1603 of Title 25

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

410-121-0145

Prescription Requirements

(1) Division of Medical Assistance Programs (DMAP) will make payment for covered drugs supplied on drug order or prescription of a licensed practitioner and dispensed by a pharmacist. Dispensings include new prescriptions, refills of existing prescriptions, and over-the-counter (OTC) medications.

(a) Each drug order or prescription filled for a DMAP client must be retained in the pharmacy's file at the pharmacy's place of business; and,

(b) All drug orders or prescriptions must comply with the Oregon State Board of Pharmacy rules and regulations as listed in OAR 855 Division 041.

(2) Notwithstanding subsection (1) of this rule, the following rules shall apply to over-the-counter Plan B emergency contraceptive drugs:

(a) DMAP may reimburse a pharmacy for distributing over-the-counter Plan B emergency contraceptive drug products to women who are 18 years old and older and who are Medicaid eligible; and,

(b) As a condition of reimbursement for over-the-counter Plan B emergency contraceptive drugs, DMAP may require that the pharmacy show proof that it has complied with Oregon Board of

Pharmacy rules pertaining to the distribution of over-the-counter Plan B emergency contraceptive drugs.

(3) Effective on or after April 1, 2008, Section 1903(i) of the Social Security Act requires that written (nonelectronic) prescriptions for covered outpatient drugs for Medicaid clients be executed on a tamper-resistant pad in order to be eligible for federal matching funds. To meet this requirement, DMAP will only reimburse for covered Medicaid outpatient drugs when the written (nonelectronic) prescription is executed on a tamper-resistant pad, or the prescription is electronically submitted to the pharmacy.

Stat. Auth.: ORS 409.010

Stats. Implemented ORS 414.65

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 44-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82; AFS

ADMINISTRATIVE RULES

53-85, f. 9-20-85, ef. 10-1-85 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 53-1985, f. 9-20-85, ef. 10-1-85; 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 461-016-0200; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0200; HR 25-1994, f. & cert. ef. 7-1-94; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08

410-121-0147

Exclusions and Limitations

The following items are not covered for payment by the Division of Medical Assistance Programs (DMAP):

- (1) Drug Products for diagnoses below the funded line on the Health Services Commission Prioritized List;
- (2) Home pregnancy kits;
- (3) Fluoride for individuals over 18 years of age;
- (4) Expired drug products;
- (5) Drug Products from Non-Rebatable Manufacturers;
- (6) Drug products that are not assigned a National Drug Code (NDC) number;
- (7) Drug products that are not approved by the Food and Drug Administration (FDA);
- (8) Drug products dispensed for Citizen/Alien-Waived Emergency Medical client benefit type;
- (9) DESI drugs (*see* OAR 410-121-0420);
- (10) Medicare Part D covered drugs or classes of drugs for fully dual eligible clients;
- (11) Effective on or after April 1, 2008, Section 1903(i) of the Social Security Act requires that written (nonelectronic) prescriptions for covered outpatient drugs for Medicaid clients be executed on a tamper-resistant pad in order to be eligible for federal matching funds. To meet this requirement, DMAP will only reimburse for covered Medicaid outpatient drugs when the written (nonelectronic) prescription is executed on a tamper-resistant pad, or the prescription is electronically submitted to the pharmacy.

Stat. Auth.: ORS 409.010

Stats. Implemented: ORS 414.065

Hist.: HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 34-1993(Temp), f. & cert. ef. 12-1-93; HR 11-1994, f. 2-25-94, cert. ef. 2-27-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 22-1997, f. & cert. ef. 10-1-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08

Rule Caption: April 1, 2008 Prioritized List interim modifications including telephonic and telemedicine.

Adm. Order No.: DMAP 10-2008(Temp)

Filed with Sec. of State: 4-1-2008

Certified to be Effective: 4-1-08 thru 9-15-08

Notice Publication Date:

Rules Amended: 410-130-0610, 410-141-0520

Subject: The Oregon Health Plan Program and Medical-Surgical Services Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP temporarily amended 410-141-0520, Health Services Commission's Prioritized List of Health Services 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.

Coverage included in the January 1, 2008 Biennial List is telephonic and e-visit codes, with further refinement by HSC January 10, 2008 and the formal HSC technical changes for April 1, 2008. DMAP temporarily amended the Medical-Surgical program administrative rule 410-130-0610 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

410-130-0610

Telemedicine

(1) For the purposes of this rule, telemedicine is defined as the use of medical information, exchanged from one site to another, via telephonic or electronic communications, to improve a patient's health status.

(2) 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) Providers billing for covered telemedicine services are responsible for the following:

(A) Complying with HIPAA and/or 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 407-120-0170, 410-120-1360, and 410-120-1380, and OAR 410 Division 14. Examples of federal and state privacy and security laws that may apply include HIPAA, if applicable and 42 CFR Part 2, if applicable 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/or DHS Privacy and Confidentiality Rules described in subsection (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.

(E) Maintaining clinical and financial documentation related to telemedicine services as required in OAR 410-120-1360.

(3) 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 CPT 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 (5).

(d) Telephonic codes may be used in lieu of videoconferencing codes, if videoconferencing equipment is not available.

(4) Telephone and E-mail billing requirements: Use the E/M code authorized in the HSC practice guideline.

(5) Videoconferencing billing requirements:

(a) Only the transmission site (where the patient is located) may bill for the transmission:

(A) Bill the transmission with 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 (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.

(6) Other forms of telecommunications, such as telephone calls, images transmitted via facsimile machines and electronic mail are services not covered:

(a) When those forms are not being used in lieu of videoconferencing, due to limited videoconferencing equipment access, or

(b) When those forms and specific services are not specifically allowed per the Health Service Prioritized List and Practice Guideline.

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

ADMINISTRATIVE RULES

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.

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(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. & 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

Department of Human Services, Public Health Division Chapter 333

Rule Caption: Immunization ALERT lifetime expansion, approved school computer records, phase-in changes.

Adm. Order No.: PH 6-2008

Filed with Sec. of State: 3-17-2008

Certified to be Effective: 3-17-08

Notice Publication Date: 2-1-2008

Rules Amended: 333-049-0010, 333-049-0020, 333-049-0030, 333-049-0040, 333-049-0050, 333-049-0060, 333-049-0065, 333-049-0070, 333-049-0080, 333-049-0090, 333-049-0120, 333-050-0010, 333-050-0020, 333-050-0030, 333-050-0040, 333-050-0050, 333-050-0060, 333-050-0070, 333-050-0080, 333-050-0090, 333-050-0095, 333-050-0100, 333-050-0110, 333-050-0120, 333-050-0130, 333-050-0140

Rules Repealed: 333-049-0110

Subject: The Oregon Department of Human Services, Public Health Division is amending rules in OAR chapters 333-049 and 333-050. Amendments address changes in the expansion of the Oregon Immunization ALERT registry system, change the phase-in schedule for hepatitis A school immunization requirements, make administrative changes related to approved computerized immunization records, and update the process for review of exclusion orders. Civil penalties are added for specific facilities that are non-compliant with Oregon

immunization laws. OAR 333-049-0110 is repealed upon the date these rules become permanently adopted.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-049-0010

Definitions

(1) All definitions of ORS 433.090 et seq. and 433.235 apply to these rules.

(2) In addition to the definitions of ORS 433.090 et seq. and 433.235, the following definitions apply:

(a) "Authorized user" has the meaning as defined in ORS 433.090(1).

(b) "Client" has the meaning as defined in ORS 433.090(3).

(c) "Exempt" means the special status of information on certain clients that will limit its disclosure.

(d) "Manager" means the manager of the statewide immunization registry or his/her designee.

(e) "Public Health Division" means the Department of Human Services Public Health Division.

(f) "Registry" means, in addition to the meaning under ORS 433.090(4), any immunization registry or immunization tracking and recall system.

Stat. Auth.: ORS 433.100

Stats. Implemented: ORS 433.100

Hist.: HD 6-1996(Temp), f. & cert. ef. 11-26-96; HD 4-1997, f. & cert. ef. 2-24-97; OHD 13-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0100; PH 6-2008, f. & cert. ef. 3-17-08

333-049-0020

Purpose and Intent

(1) The purpose of these rules is to implement ORS 433.090 et seq., which:

(a) Authorizes the Public Health Division to develop a registry for all children and adults born or living in Oregon; and

(b) Requires the Public Health Division to adopt rules to develop and implement the registry, including a process by which a parent or guardian can control the transfer of information from the immunization record when such control is necessary to protect the health or safety of the family.

(2) In order to increase appropriate immunizations among preschool age children, it is the intent that, as soon as practical, all children born in the state will be automatically enrolled in the registry using information derived from birth certificates, and that all children from birth through 35 months of age, who are not enrolled from birth certificates, will receive priority for enrollment in the registry.

Stat. Auth.: ORS 433.100

Stats. Implemented: ORS 433.092

Hist.: HD 6-1996(Temp), f. & cert. ef. 11-26-96; HD 4-1997, f. & cert. ef. 2-24-97, f. & cert. ef. 7-12-01; OHD 13-2001, Renumbered from 333-019-0105; PH 6-2008, f. & cert. ef. 3-17-08

333-049-0030

Enrollment

(1) All children born in the state shall be enrolled in the registry.

(2) All children who live with a parent or guardian in the state for any period of time, and who receive an immunization, may be enrolled in the registry.

(3) Any person who receives an immunization in the state may be enrolled in the registry.

(4) The enrollment of clients in the registry shall be in a manner and on such forms as prescribed by the Manager.

(5) Nothing in these rules require the consent of a parent, guardian or client prior to enrollment in the registry.

(6) For the purposes of enrolling children in the registry, the Manager may identify children born in the state from any birth record or abstract.

Stat. Auth.: ORS 433.094, 433.100 & 432.119

Stats. Implemented: ORS 433.094 & 433.100

Hist.: HD 6-1996(Temp), f. & cert. ef. 11-26-96; HD 4-1997, f. & cert. ef. 2-24-97; OHD 13-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0110; PH 6-2008, f. & cert. ef. 3-17-08

333-049-0040

Collection and Release of Information

(1) The Manager may collect information for a client's immunization record from any authorized user. Such information to be collected shall be determined by the Manager and provided to the registry on forms provided by the Manager.

(2) The Manager may collect information for a client's tracking and recall record from any authorized user. Information to be collected includes such information necessary to send reminder cards to, place telephone calls to, or personally contact the client or the parent or the guardian of a client.

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Such information shall be determined by the Manager and provided to the tracking and recall system on forms provided by the Manager.

(3) The Manager may receive information from other registries and may share information with other such registries, provided that the Manager makes a determination that other registries have confidentiality protection at least equivalent to those under ORS 433.090 to 433.102 and these rules. The Manager shall prescribe the information that may be shared and the forms for sharing information to and from other registries.

(4) The Manager may request information to determine the name of any person and information on contacting the person or such person's parent or guardian in order to notify them about the existence of the registry. The Manager may seek information on persons in the state who have not enrolled in the registry through contacting other state agencies, and other appropriate organizations that have access to such information.

(5) The Manager may release and publish information in the registry in an aggregate form that does not identify a client.

Stat. Auth.: ORS 433.096, 433.094 & 432.119

Stats. Implemented: ORS 433.096 & 433.094

Hist.: HD 6-1996(Temp), f. & cert. ef. 11-26-96; HD 4-1997, f. & cert. ef. 2-24-97; OHD 13-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0115; PH 6-2008, f. & cert. ef. 3-17-08

333-049-0050

Reporting to the Immunization Registry

(1) Any provider who participates in the registry and who administers immunizations identified by the Manager shall report such immunization to the registry within fourteen (14) calendar days of such immunization.

(2) Reports shall be submitted to the registry in a manner and on such forms as required by the Manager. Such forms shall be provided by the Manager.

(3) Any authorized user may report immunizations, and other such information, permitted under ORS 433.090(3) and (5), as prescribed by the Manager, to the registry without the consent of the client or the parent or guardian of the client. Reporting this information without the consent mentioned above shall not subject a person to liability or civil action.

Stat. Auth.: ORS 433.096

Stats. Implemented: ORS 433.096

Hist.: HD 6-1996(Temp), f. & cert. ef. 11-26-96; HD 4-1997, f. & cert. ef. 2-24-97; OHD 13-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0120; PH 6-2008, f. & cert. ef. 3-17-08

333-049-0060

Access to Immunization Records

(1) Clients, parents and guardians:

(a) Clients and parents or guardians of children less than 18 years of age may request a copy of their, or their child's, immunization record by submitting a request for the record, as prescribed by the Manager.

(b) The Manager may provide a maximum of four (4) copies of any client's immunization record without charge, within one calendar year, pursuant to the request from a client, parent or guardian. Additional copies of the immunization record may be provided based on a fee established by the Manager that is reasonably calculated to reimburse the registry for the actual cost in making such records available.

(2) Other authorized users: All other authorized users shall access such records in a manner prescribed by the Manager.

Stat. Auth.: ORS 433.094 & 433.096

Stats. Implemented: ORS 433.094 & 433.096

Hist.: HD 6-1996(Temp), f. & cert. ef. 11-26-96; HD 4-1997, f. & cert. ef. 2-24-97; OHD 13-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0125; PH 6-2008, f. & cert. ef. 3-17-08

333-049-0065

Fees

For the purpose of implementing ORS Chapter 433.090 through 433.104 fees may be charged in accordance with this rule:

(1) Fees may be charged to authorized users including, but not limited to, the following: health plans, health provider associations, private or non-profit institutions, other state registries, federal health agencies or their contractors.

(2) Fees shall not be charged to the following users: individual health care providers and clinics, Oregon schools, Oregon children's facilities, Oregon hospitals or DMAP.

(3) Fees may be waived at the discretion of the ALERT Manager or the DHS Immunization Program Manager in accordance with Immunization Policy.

(4) Unless waived, or exempt under subsection (2) of this rule, a fee of \$10 per client shall be charged to each authorized user for each client specific immunization data request.

(5) A request for client specific data shall be responded to only when made by an authorized user for information about a client under its care. Requests from persons other than authorized users or from authorized users for data beyond that of a specific patient(s) under its care will be considered on a case by case basis in the interests of public health practice and may be responded to only with aggregate/de-identified data.

Stat. Auth.: ORS 433.100

Stats. Implemented: ORS 433.100

Hist.: PH 6-2005, f. & cert. ef. 4-13-05; PH 6-2008, f. & cert. ef. 3-17-08

333-049-0070

Limitations on Access to Information in the Immunization Registry and Tracking and Recall System

(1) No authorized user shall access information on a client who is not presently under their care, or enrolled in their post-secondary educational institution, school, children's facility, program or health plan, except as otherwise provided by law.

(2) The Manager may monitor and audit all access to a client's record contained in the registry.

(3) The Manager may require any person who has accessed a client's record to provide evidence that such client was under the care of the person or enrolled in the person's post-secondary educational institution, school, children's facility, program or health plan at the time the client's record was accessed.

(4) The Public Health Division may report violations of these rules by any authorized user who has accessed a client's record to the appropriate licensing or regulatory authority.

Stat. Auth.: ORS 433.098

Stats. Implemented: ORS 433.098

Hist.: HD 6-1996(Temp), f. & cert. ef. 11-26-96; HD 4-1997, f. & cert. ef. 2-24-97; OHD 13-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0130; PH 6-2008, f. & cert. ef. 3-17-08

333-049-0080

Limitations on the Transfer of Information from the Immunization Registry

(1) A parent or guardian may request a limitation on the transfer of information pertaining to a child enrolled in a registry when such child has a disease or condition that precludes administration of some or all immunizations. No information on such children will be disclosed in response to inquiries to the registry.

(a) Any parent or guardian of a child who has a disease or condition that may preclude administration of some or all immunizations may request a limitation on the child's information that may be transferred from the registry by providing a written request to the Manager.

(b) Upon verification of the information in the request, the Manager shall cause the registry to flag the client's record and to limit transfer of the information on the client. The Manager shall also notify the parent or guardian of such action.

(2) Safety. A parent or guardian may request a limitation on the transfer of information pertaining to a child enrolled in a registry when a third party could use the information in the record to locate the child, or other family members who reside with the child, and who the parent or guardian reasonably believes presents a risk of harm to the child or other family members.

(a) Any parent or guardian of a client may request a limitation on the transfer of child's information by providing a written request to the Manager when the parent or guardian reasonably believes there is a risk of harm to the child, or other family members, where such person could be located through information from the registry, and the child or other family members may be harmed if located.

(b) The request for limitation must also include a statement and evidence that supports the request. Such evidence may include any evidence accepted under ORS 192.445(2)(b)(A)-(E).

(c) Upon receipt of acceptable evidence to support the request, the Manager shall cause the registry to flag the child's record and to limit transfer of the information on the child. The Manager shall also notify the parent or guardian of such action.

(3) Upon receipt of any request under this section, the Manager may cause the registry to flag the child's record for a period of 30 days until the request can be approved.

(4) After approval of a request under this section, such request will remain in effect until the Manager receives a written request from the parent or guardian to remove the flag from the child's record.

Stat. Auth.: ORS 433.100

Stats. Implemented: ORS 433.100

Hist.: HD 6-1996(Temp), f. & cert. ef. 11-26-96; HD 4-1997, f. & cert. ef. 2-24-97; OHD 13-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0135; PH 6-2008, f. & cert. ef. 3-17-08

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333-049-0090

Notification of Needed Immunizations

(1) The Manager may provide notice to clients or parents and guardians of clients less than 18 years of age when the tracking and recall system indicates that a client has missed a scheduled immunization. Notification shall be in such form as prescribed by the Manager.

(2) The Manager may personally contact the client or parent or guardian of a client less than 18 years of age after two notifications that the client has missed an immunization have been sent and the registry has not received information that the client has been immunized within two weeks after the second notification was sent.

Stat. Auth.: ORS 433.096

Stats. Implemented: ORS 433.096

Hist.: HD 6-1996(Temp), f. & cert. ef. 11-26-96; HD 4-1997, f. & cert. ef. 2-24-97; OHD 13-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0140; PH 6-2008, f. & cert. ef. 3-17-08

333-049-0120

Deletion of Information in the Registry and Tracking and Recall System

A client who is 18 years of age or older may request to have their record sealed or removed from the registry. The election of whether to seal the record or remove the record is at the sole discretion of the client.

(1) Process. A client requesting sealing or removal of their registry record must submit a form approved by the Manager for that purpose. The client may elect to have their record sealed or removed from the registry. If the client does not elect either option then their record will be removed from the registry.

(2) The request for sealing or removal of a client's record must also include a legible photocopy of one piece of photo identification. Acceptable identification includes any of the following: a valid state-issued driver's license or identification card; a passport; or a U.S. military identification card.

(3) If a client elects to have their registry record sealed, the information will remain in the registry but will not be released to authorized users. In the case of a declared public health emergency, the Manager may release the information to public health officials for the sole purpose of responding to the declared emergency. A client may request that their record be unsealed by submitting the form approved by the Manager along with a photocopy of an approved document that verifies the client's identity. A record that is removed from the registry cannot be recovered.

(4) When an immunization record is removed from the registry, certain pieces of demographic information, including a client's name and date of birth, must be kept on file in order to keep the immunization record from being repopulated.

Stat. Auth.: ORS 433.098

Stats. Implemented: ORS 433.098

Hist.: HD 6-1996(Temp), f. & cert. ef. 11-26-96; HD 4-1997, f. & cert. ef. 2-24-97; OHD 13-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0155; PH 6-2008, f. & cert. ef. 3-17-08

333-050-0010

Definitions Used in the Immunization Rules

As used in OAR 333-050-0010 through 333-050-0140:

(1) "Certificate of Immunization Status" means a form provided or approved by the Public Health Division on which to enter the child's immunization record or exemption.

(2) "Certificate of Immunization Status Addendum" means a form provided or approved by the Public Health Division on which to enter the child's immunizations received after the initial series of Diphtheria/Tetanus containing vaccine, Polio and Measles/Mumps/Rubella vaccines.

(3) "Complete" means a category assigned to any child whose record indicates that the child is fully immunized or has an immunity exemption as specified by OAR 333-050-0050(2) or (7).

(4) "Contraindication" means either a child or a household member's physical condition or disease that renders a particular vaccine improper or undesirable in accordance with the current recommendations of the Advisory Committee on Immunization Practices, Department of Health and Human Services, Centers for Disease Control and Prevention, and the American Academy of Pediatrics.

(5) "County Immunization Status Report" means a report submitted by the local health department (or school or facility if there is no local health department) to the Public Health Division to report annually the number of children as specified, in the area served, and the number susceptible to the vaccine preventable diseases covered by these rules.

(6) "Evidence of Immunization" means an appropriately signed and dated statement indicating at least the month and year each dose of each vaccine was received.

(7) "Exclude" or "Exclusion" means not being allowed to attend a school or facility pursuant to an Exclusion Order from the local health department based on non-compliance with the requirements of ORS 433.267(1), and these rules.

(8) "Exclusion Order for Incomplete Immunization or Insufficient Information" means a form provided or approved by the Public Health Division for local health department and Public Health Division use in excluding a child who, based on the child's record, is in non-compliance with the vaccine requirements of OAR 333-050-0050(2) or who has insufficient information on his or her record to determine whether the child is in compliance. Forms submitted for approval must contain the substantive content of the Public Health Division form.

(9) "Exclusion Order for No Record" means a form provided or approved by the Public Health Division for local health department, Public Health Division and school or facility use in excluding a child with no record. Forms submitted for approval must contain the substantive content of the Public Health Division form.

(10) "Exempted Children's Facilities" are those which:

(a) Are primarily for supervised training in a specific subject, including, but not limited to, dancing, drama, or music;

(b) Are primarily an incident of group athletic or social activities sponsored by or under the supervision of an organized club or hobby group;

(c) Are operated at a facility where children may only attend on a limited basis not exceeding four different days per year; or

(d) Are operated on an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care.

(11) "Health Care Practitioner" means a practitioner of the healing arts who has within the scope of the practitioner's license, the authority to order immunizations, to include: M.D., D.O., licensed nurse practitioners with prescription writing privileges, and licensed physicians' assistants with prescription writing privileges who are working under the sponsorship of an M.D., D.O., or a registered nurse working under the direction of an M.D. or a D.O.

(12) "Immunity Exemption" means a written statement signed by a physician or an authorized representative of the local health department that the child should be exempted from receiving specified immunizations due to a disease history based on a health care practitioner's diagnosis or the results of an immune titer.

(13) "Incomplete" means a category assigned to any child whose record indicates that the child is not fully immunized as specified in OAR 333-050-0050(2). This category only includes a child whose record indicates that the child is past due on immunizations on or before the date the Primary Review Summary form is due at the local health department;

(14) "Insufficient" means a category assigned to any child whose record does not have enough information to make a proper determination about the child's immunization status, including unsigned records, vaccine dates before day of birth, dates out of sequence, missing doses in the middle of a vaccine series, more than two doses of a vaccine series given in the same month, dates before vaccine licensure and religious exemptions signed by the parent and dated August 2008 or after where no vaccines are specified. This category does not apply to signed but undated records;

(15) "Local Health Department" means the District or County Board of Health, Public Health Officer, Public Health Administrator or Health Department having jurisdiction within the area.

(16) "Medical Exemption" means a written statement signed by a physician or an authorized representative of the local health department that the child should be exempted from receiving specified immunizations based on a medical diagnosis resulting from a specific medical contraindication.

(17) "New Enterer" means a child who meets one of the following criteria:

(a) Infants or preschoolers attending an Oregon facility;

(b) Infants or preschoolers attending a drop-in facility on five or more different days within one year;

(c) Children initially attending a school at the entry level (kindergarten or the first grade, whichever is the entry level);

(d) Children from a home-school setting initially attending a school or facility at any grade (preschool through 12th grade); or

(e) Children initially attending a school or facility after entering the United States from a foreign country at any grade (preschool through 12th grade).

(18) "Non-Compliance" means failure to comply with any requirement of ORS 433.267(1) or these rules.

(19) "Post-Secondary Education Institution" means:

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(a) A state institution of higher education under the jurisdiction of the State Board of Higher Education;

(b) A community college operated under ORS chapter 341;

(c) A school or division of Oregon Health and Science University; or

(d) An Oregon-based, generally accredited, private institution of higher education, where:

(A) Oregon-based, generally accredited includes any post-secondary institution described in OAR 583-030-0005(2) or classified as exempt under ORS 348.604; and

(B) Private institution refers to any non-public post-secondary education institution.

(20) "Primary Review Summary" means a form provided or approved by the Public Health Division to schools and facilities for enclosure with records forwarded to the local health department for secondary review and follow up. Forms submitted for approval must contain the substantive content of the Public Health Division form.

(21) "Primary Review Table" means a document provided by the Public Health Division for the judgment of compliance or non-compliance with the required immunizations.

(22) "Public Health Division" means the Department of Human Services Public Health Division.

(23) "Record" means a statement relating to compliance with the requirements of ORS 433.267(1)(a) through (c) and these rules.

(24) "Religion" means any system of beliefs, practices or ethical values.

(25) "Religious Exemption" means a statement signed by a parent that the child has not been immunized as prescribed by OAR 333-050-0050(2), because the child is being reared as an adherent to a religion, the teachings of which are opposed to such immunization.

(26) "Restrictable Disease" means a communicable disease for which the local health department or administrator has the authority to exclude a child as described in OAR 333-019-0010 through 333-019-0014.

(27) "School Year" means an academic year as adopted by the school or school district (usually September through June).

(28) "Susceptible" means being at risk of contracting one of the diseases covered by these rules, by virtue of being in one or more of the following categories:

(a) Not being complete on the immunizations required by these rules;

(b) Possessing a medical exemption from any of the vaccines required by these rules due to a specific medical diagnosis based on a specific medical contraindication; or

(c) Possessing a religious exemption for any of the vaccines required by these rules.

(29) "These Rules" means OAR 333-050-0010 through 333-050-0140.

(30) "Transferring Child" means a child moving from:

(a) One facility to another facility, only when records are requested in advance of attendance from a previous facility;

(b) One school in this state to another school in this state when the move is not the result of a normal progression of grade level; or

(c) A school in another state to a school in this state.

(31) "Up-to-Date" means not complete, currently on schedule and not subject to exclusion, based on the immunization schedule for spacing doses, as prescribed in OAR 333-050-0120.

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

Stat. Auth.: ORS 433.004 & 433.273

Stats. Implemented: ORS 433.001, 433.004, 443.006 & 433.235 - 433.284

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 15-1986, f. & ef. 7-15-86; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0021; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06; PH 12-2007, f. & cert. ef. 9-27-07; PH 6-2008, f. & cert. ef. 3-17-08

333-050-0020

Purpose and Intent

(1) The purpose of these rules is to implement ORS 433.235 through 433.284, which require evidence of immunization or a medical, immunity, or religious exemption for each child as a condition of attendance in any school or facility, and which require exclusion from school or facility attendance until such requirements are met.

(2) The intent of the school and facility immunization statutes and these rules is to require that:

(a) A new enterer provide a signed and dated Certificate of Immunization Status form documenting either: evidence of immunization or a religious, and/or medical or immunity exemption. If age appropriate,

required for the child's grade level, and the child has not claimed an exemption, a minimum of one dose each of the following vaccines must be received prior to attendance: Polio, Measles, Mumps, Rubella, Hepatitis B, Hepatitis A, Varicella, Haemophilus influenzae Type b vaccine and Diphtheria/Tetanus/Pertussis containing vaccine. (See Primary Review Table);

(b) A transferring child provide evidence of immunization or an exemption:

(A) Within 30 days of initial attendance if records will be requested from a school in the United States;

(B) Prior to initial attendance, as specified in OAR 333-050-0020(2)(a), if records will not be requested from a school in the United States;

(C) Prior to initial attendance, as specified in OAR 333-050-0020(2)(a), if the child is transferring from one facility to another;

(c) A child currently attending not be allowed to continue in attendance without complete or up-to-date evidence of immunization, or an exemption.

(3) The only exception is for family child care homes, either registered or exempt from registration, providing child care, six weeks of age to kindergarten entry, in a residential or nonresidential setting. These programs are exempt from all requirements except an up-to-date Certificate of Immunization Status form on each child in attendance.

(4) All schools are required to comply with these rules, including public schools, private schools, charter schools, and alternative education programs. Any program that provides educational instruction designed to lead to a high school diploma or transfer into a regular high school program must also comply with these rules.

(5) Nothing prohibits a school, children's facility, or post-secondary educational institution from adopting additional or more stringent requirements than the statutes or rules as long as medical, immunity, and religious exemptions are included and the requirements are in compliance with the recommendations of the Advisory Committee on Immunization Practices, Department of Health and Human Services, Centers for Disease Control and Prevention.

(6) Public schools are required to allow transferring students at least 30 days to provide an immunization record.

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

Stat. Auth.: ORS 433.004 & 433.273

Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0025; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06; PH 12-2007, f. & cert. ef. 9-27-07; PH 1-2008(Temp), f. & cert. ef. 1-8-08 thru 6-30-08; PH 6-2008, f. & cert. ef. 3-17-08

333-050-0030

Visitors, Part-Time Students, and Residents

(1) Any child visiting or attending a school or facility on five or more different days in a given school year or residing on the premises of a school or facility regardless of whether the child attends classes or receives child care, at any age or grade through grade 12, shall be subject to the requirements of either a new enterer or transferring child as appropriate. Such residents and visitors for the purposes of these rules are in attendance.

(2) Home-schooled, private, or special education students or students in other non-traditional educational settings are subject to these rules if they:

(a) Meet with an instructor in a school building for any amount of time on a regular or irregular basis, but at least five times per school year; or

(b) Participate in sports or other activities at a school through a school-sponsored program at least five times per school year.

(3) Students in residential, correctional, or treatment programs that receive educational instruction are subject to these rules.

(4) For facilities providing drop-in child care, a child may attend on up to four different days without a Certificate of Immunization Status on file. Before allowing attendance on the fifth visit, a Certificate of Immunization Status must be provided showing at least one dose of each required vaccine or an appropriately signed exemption.

Stat. Auth.: 433.004 & 433.273

Stats. Implemented: ORS 433.001, 433.004, 443.006 & 433.235 - 433.284

Hist.: HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0026; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 12-2007, f. & cert. ef. 9-27-07; PH 6-2008, f. & cert. ef. 3-17-08

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Statements (Records) Required

(1) The statement initially documenting evidence of immunization or exemption under ORS 433.267(1)(a) through (c) must be on a Certificate of Immunization Status form and include one or more of the following:

- (a) Evidence of Immunization signed by the parent, health care practitioner or an authorized representative of the local health department;
- (b) A written statement of medical exemption signed by a physician and an authorized representative of the local health department;
- (c) A written statement of immunity exemption signed by an authorized representative of the local health department;
- (d) A written statement of religious exemption signed by the parent;

or

(e) A written statement of disease history (immunity exemption) for varicella signed by a parent, physician or authorized representative of the local health department.

(2) Evidence of immunization shall include at least the month and year of each dose of each vaccine received and must be appropriately signed and dated to indicate verification by the signer. Pre-signed Certificate of Immunization Status forms without vaccine dates are not allowed. If a Certificate of Immunization Status form is signed but not dated, the person who receives the form at the school or facility may date the form with the date it was received.

(3) The statement documenting evidence of updated immunizations under ORS 433.267(1)(a) through (c) may be on the initial Certificate of Immunization Status form or a Certificate of Immunization Status Addendum. The Addendum does not replace the Certificate of Immunization Status form. The Addendum should be attached to the child's original Certificate of Immunization Status form. Dates on the Addendum do not need to be transcribed onto the original Certificate of Immunization Status form. Evidence of updated immunizations shall include at least the month and year of each dose of each vaccine received and must be appropriately signed and dated to indicate verification by the signer.

(4) The school or facility may choose to complete or update a Certificate of Immunization Status form, by transcribing dates from, attaching and referencing on the form, one or more of the following records listed in subsections (a) through (e) of this section.

- (a) A health care practitioner documented immunization record;
- (b) An unsigned record on health care practitioner or clinic letterhead;
- (c) An unsigned record printout from the statewide immunization information system, Oregon Immunization ALERT. ALERT records may be placed in the student's file without transcription onto a Certificate of Immunization Status as long as the printout represents a complete or up-to-date immunization history. If the ALERT record is an update to the Certificate of Immunization Status, it may be attached to the original certificate without transcription;

(d) An unsigned record printout from a computer system approved by the Public Health Division as specified in OAR 333-050-0060(5). Record printouts for Public Health Division-approved computer systems may be placed in the student's file without transcription onto a Certificate of Immunization Status as long as the printout represents a complete or up-to-date immunization history, and includes a history of chickenpox disease if present; or

(e) A written statement signed and dated by the parent.

(5) The Certificate of Immunization Status form must be signed and dated by the person transcribing the information.

(6) When a transferring student enters an Oregon school, the receiving school will attempt to obtain immunization records from the previous school. If immunization records are not immediately available, the receiving school may, according to school policy:

(a) Allow the student to enroll conditionally. If immunization records are not received the school will include the student on the Primary Review Summary report; or

(b) Issue an Exclusion Order for No Record to the parent or guardian with an exclusion date of not less than thirty days after initial attendance. The school is required to provide a copy of the order to the parent either by hand at time of enrollment or by mailing the order at least 14 calendar days prior to the exclusion date.

(7) If the student transfers to a new school district, except when the move is due to the normal progression of grade levels, such as to a junior high or senior high from a feeder school, the receiving school shall ensure that the transferred records are on a signed Certificate of Immunization Status form or another Public Health Division-approved form. The original transferred records that are not on an approved form shall be attached to a Certificate of Immunization Status form and the form shall be marked with

a reference to the attached records, signed, and dated by the person transcribing the information on the form.

(8) The records relating to the immunization status of children in schools shall be transferred to the receiving schools pursuant to ORS 326.575(2) within 30 days.

(9) When a new enterer is admitted in error to a school or facility without an immunization history or appropriately signed exemption, the school or facility may issue an Exclusion Order for No Record. The exclusion date shall be 14 calendar days after the date the Exclusion Order is mailed to the parent.

(10) When a child is determined by the facility, school or school district to be homeless and does not have a completed Certificate of Immunization Status on file with the school, the student will be allowed to enroll conditionally.

(a) If immunization records are not received the school will include the student on the Primary Review Summary report. Schools may also choose to issue an Exclusion Order for No Record to the parent with an exclusion date of not less than 30 days after initial attendance.

(b) School staff shall make every effort to help the family compile an immunization record for the student, including requesting a record from a previous school, Oregon Immunization ALERT or a previous medical provider.

(11) Where a child attends both a facility and a school, the school is responsible for reporting and for enforcing these rules in accordance with the school and facility vaccine requirements. However, because of the need for outbreak control when school is not in session, the facility administrator will be responsible for requesting that the parent also provide an up-to-date Certificate of Immunization Status to the facility. If the parent does not comply, the facility administrator shall inform the parent that in the event of an outbreak the child will be excluded until it is determined that the child is not susceptible.

(12) When a child reaches the age of medical consent in Oregon, 15 years of age, the child may sign his or her own Certificate of Immunization Status, including religious exemption.

Stat. Auth.: ORS 433.004 & 433.273

Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 15-1986, f. & ef. 7-15-86; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0030; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06; PH 12-2007, f. & cert. ef. 9-27-07; PH 6-2008, f. & cert. ef. 3-17-08

333-050-0050

Immunization Requirements

(1) For purposes of this section, immunization against the following diseases means receipt of any vaccine licensed by the United States Food and Drug Administration (or their foreign equivalent) for the prevention of that disease.

(2) For purposes of ORS 433.267(1), immunizations are required as follows (see Primary Review Table to determine the number of required doses for a child's age or grade):

(a) Diphtheria/Tetanus/Pertussis containing vaccine (DTaP) — Five doses must be received unless:

(A) The fourth dose was given at or after the fourth birthday, in which case the child is complete with four doses; or

(B) The third dose of Diphtheria/Tetanus containing vaccine was received on or after the seventh birthday, in which case the child is complete with three doses.

(b) Polio — Four doses must be received unless:

(A) The third dose was given at or after the fourth birthday, in which case the child is complete with three doses of polio vaccine; or

(B) The student is 18 years of age or older. Polio vaccination at or after the 18th birthday is not required.

(c) Measles — Two doses must be received at or after 12 months of age, or in the same month and year as the child's first birthday. Second dose must be received at least 28 days after first dose.

(d) Rubella — One dose must be received at or after 12 months of age, or in the same month and year as the child's first birthday.

(e) Mumps — One dose must be received at or after 12 months of age, or in the same month and year as the child's first birthday.

(f) *Haemophilus influenzae* Type b (Hib) vaccine — Up to four doses depending on the child's current age and when previous doses were administered.

(g) Hepatitis B — Up to three doses must be received. If the first dose was received at or after 11 years of age and the second dose is received at least four months after dose one, the child is complete with two doses.

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(h) Varicella — Up to two doses must be received, depending on the child's age when the first dose was administered. The first dose must be received at or after 12 months of age or in the same month and year as the child's first birthday, and after March 1995, the date the vaccine was licensed in the United States. Second dose, if required, must be received at least 28 days after first dose.

(i) Hepatitis A — Two doses must be received at or after 12 months of age, or in the same month and year as the child's first birthday. Beginning school year 2008-2009, the requirement for Hepatitis A vaccine will be phased in by grade. (See Primary Review Table.)

(j) Tetanus/Diphtheria/Pertussis booster (Tdap) — One dose must be received at or after 10 years of age, unless the last Diphtheria/Tetanus containing vaccine was given less than five years ago. Beginning school year 2008-2009, the requirement for Tdap will be phased in by grade. (See Primary Review Table.)

(3) Interrupted series: If there is a lapse of time between doses longer than that recommended by the standard described in OAR 333-050-0120, the schedule should not be restarted. Immunization may resume with the next dose in the series.

(4) Partial doses: Because the efficacy of immunizing with partial doses of the vaccines listed in this rule is not known, this procedure does not satisfy the requirements of these rules.

(5) A child shall not be excluded from school for failing to receive a required vaccine if the State Health Officer has determined that there is a vaccine shortage and that is the reason the child has not received the vaccine. Any vaccine that has been waived due to a vaccine shortage will be required at the next review cycle, once the shortage has been lifted. The Public Health Division shall notify local health departments, schools and facilities of any shortages that affect their procedures under these rules.

(6) The local public health officer, after consultation with the Public Health Division, may allow a child to attend a school or facility without meeting the minimum immunization requirements in case of temporary local vaccine shortage.

(a) The local health department shall provide a letter signed by the local health officer to the parent of the affected student detailing which vaccines the student is being exempted from. The letter must state that the student will receive an Exclusion Order if the student's record is not updated with the missing doses prior to the next exclusion cycle.

(b) A copy of the letter must be attached to the student's Certificate of Immunization Status on file at the school or facility.

(c) A photocopied form letter signed by the local health officer may be used by the local health department when the shortage is expected to affect more than one child.

(d) If the vaccine is still unavailable at the next exclusion cycle, the local health department, with the agreement of the Public Health Division, will not issue Exclusion Orders for the unavailable vaccine.

(7) The following immunity exemptions satisfy the immunization requirements for the specified vaccines:

(a) Exemption for Measles, Mumps or Rubella vaccination due to a disease history may be certified by a physician or an authorized representative of the local health department for a child who has immunity based on a health care practitioner's diagnosis;

(b) Exemption for Measles, Mumps or Rubella vaccination due to a documented immune titer may be certified by a physician or an authorized representative of the local health department;

(c) Exemption for Hib conjugate vaccination may be certified by a physician or authorized representative of the local health department for a child who experienced invasive Haemophilus influenzae Type b disease at 24 months of age or older;

(d) Exemption for Varicella vaccine may be signed by the parent for history of varicella. The date of the disease is not required. This exemption will be automatically authorized by the local health department.

(e) Exemption for Varicella based on laboratory confirmation of immunity may be certified by a physician or authorized representative of the local health department;

(f) Exemption for Hepatitis B vaccination based on laboratory confirmation of immunity or confirmation of carrier status may be certified by a physician or authorized representative of the local health department; and

(g) Exemption for Hepatitis A vaccination based on laboratory confirmation of immunity may be certified by a physician or authorized representative of the local health department.

(8) Children possessing the following medical exemptions are susceptible to the diseases for which they are exempt from vaccination:

(a) Exemption for measles, mumps, rubella or varicella vaccination may be certified by a physician or an authorized representative of the local

health department for a post-pubertal female when she is currently pregnant or there is a significant risk of her becoming pregnant within one month; and

(b) Exemption for one or more immunizations shall be established by a diagnosis based on a specific medical contraindication certified in a letter from the physician or an authorized representative of the local health department. The vaccines, medical diagnosis, practitioner's name, address and phone number must be documented and attached to the record.

(9) Exemptions submitted to the school or facility must be in English.

(10) A child may attend a school or facility under ORS 433.267(1) if the child is up-to-date and remains up-to-date and in compliance with immunization schedules for spacing between doses presented in OAR 333-050-0120.

(11) If evidence is presented to the local health department that an Exclusion Order was issued in error because a vaccine was given within the four-day grace period recommended by the Advisory Committee on Immunization Practices as published in the General Recommendations on Immunization, the local health department shall rescind the Exclusion Order. The local health department shall notify the child's school or facility when an Exclusion Order is rescinded.

(12) In situations where a child's vaccine history presents an unusual problem not covered by these rules, the local health department may use its judgment to make a final determination of the child's immunization status.

(13) Religious exemption from immunization requirement is allowed for one or more of the vaccines. Parents must select which vaccines a child is being exempted from by checking the appropriate boxes on the Certificate of Immunization Status.

(14) A child may not be excluded from school until kindergarten for not having the fifth dose of Diphtheria/Tetanus/Pertussis containing vaccine, fourth dose of Polio vaccine or second dose of Measles vaccine.

(15) A child may not be excluded from school until seventh grade for not having Tdap vaccine.

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

Stat. Auth.: ORS 433.004 & 433.273

Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 12-2000, f. & cert. ef. 12-26-00; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0035; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06; PH 12-2007, f. & cert. ef. 9-27-07; PH 1-2008(Temp), f. & cert. ef. 1-8-08 thru 6-30-08; PH 6-2008, f. & cert. ef. 3-17-08; PH 6-2008, f. & cert. ef. 3-17-08

333-050-0060

Primary Review of Records

(1) At least annually the administrator will conduct a primary review of each child's record to determine the appropriate category of each child. This review shall be completed no later than 35 calendar days prior to the third Wednesday in February unless otherwise approved in writing first by the local health department and then by the Public Health Division.

(2) The administrator shall categorize all children as follows:

(a) "Complete";

(b) "Up-to-Date";

(c) "Religious Exemption": This category applies to any child whose incomplete immunizations are covered by a religious exemption;

(d) "Permanent Medical Exemption": This category applies to any child who is susceptible as evidenced by a medical exemption statement on file as specified by OAR 333-050-0050(8), whose medical exemption statement has been reviewed by the local health department and has been determined to be based on a contraindication that is permanent;

(e) "Temporary Medical Exemption": This category applies to any child who is susceptible as evidenced by a medical exemption statement on file as specified by OAR 333-050-0050(8), whose medical exemption statement has not been reviewed by the local health department, or whose medical exemption is not permanent;

(f) "Incomplete";

(g) "Insufficient Information";

(h) "No Record": This category applies to any child with no record on file at the school or facility.

(i) "Children not to be counted": School age children also attending a facility should be counted by the school. Children enrolled in a school but physically attending another school should be counted by the school they physically attend. Children attending a preschool or Head Start program and another facility should be counted by the preschool or Head Start program. Children physically attending more than one child care facility or

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school should be counted by the facility or school where they attend the most hours.

(3) 35 calendar days prior to the third Wednesday in February, unless otherwise approved in writing first, by the local health department and then by the Public Health Division, the administrator shall provide to the local health department for secondary review:

(a) Organized alphabetically within category, copies of records or a computer printout of the records for all children with incomplete immunizations or insufficient information;

(b) Copies of records of children with a medical exemption, except those records that have been certified by the local health department as having a permanent medical or immunity exemption and are otherwise complete with no further review required.

(c) A completed Primary Review Summary form that includes an alphabetical list for each category and includes children with no record. The form must include each child's name, current grade level, parent names and current mailing address. A computer-generated list from a system currently approved by the Public Health Division may be submitted in lieu of the Primary Review Summary form.

(4) The administrator shall review the completed Primary Review Summary form for mathematical accuracy and correct any errors before forwarding the completed Primary Review Summary form to the local health department.

(5) All copies of records provided to the local health department for secondary review must contain at least the following: The child's name, date of birth, and evidence of immunization or exemption. A copy of the records or a computer printout of the records must be used in place of the original record.

(a) Computer printouts and the results from computer-generated immunization assessments (computer outputs) must have the prior approval of the Public Health Division. To receive approval to be used for the primary review report in January, computer printouts and computer outputs must be received by the Public Health Division no later than the last working day of November in the year prior to the year in which the primary review reports are due.

(b) The Public Health Division will review computer printouts and computer outputs for essential data elements, the sequence of data elements, and specific test results as calculated by the computerized system.

(c) Provisional approval will be given to a computer tracking system after correct assessment has been confirmed for test data and essential data elements in required reports. Computer tracking systems with provisional approval will be reviewed after use during the annual review and exclusion cycle. Final approval will be given after any programming errors identified during the cycle have been corrected by the tracking system and additional reports have been approved by the Public Health Division.

(d) The Public Health Division also reserves the right to withdraw computer system approval.

(e) When ORS 433.235 through 433.284 and/or these rules are amended, computer systems must be updated within 120 calendar days. The Public Health Division will then allow 60 calendar days for review, needed changes and final approval. Computer outputs that are not in compliance will not be authorized for use during the annual review and exclusion cycle.

(6) Additional review cycles for incomplete or insufficient records with specific time-frames are allowable if:

(a) Mutually agreed upon by the affected local health department and school or facility.

(b) Additional exclusion cycles may be required at the direction of the local health department or the Public Health Division. Exclusion dates shall be no less than 14 calendar days from the date that the Exclusion Orders are mailed.

(7) It is the responsibility of the administrator to see that primary review of immunization records is accomplished according to these rules. All or part of the actual review may be delegated by mutual agreement of parties affected to a third party subject to this requirement.

Stat. Auth.: ORS 433.004 & 433.273

Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0040; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06; PH 12-2007, f. & cert. ef. 9-27-07; PH 6-2008, f. & cert. ef. 3-17-08

333-050-0070

Secondary Review of Records

(1) The local health department shall conduct a secondary review of those records received from the administrator. The review shall begin 35 calendar days prior to the third Wednesday in February, unless otherwise approved by the Public Health Division.

(2) In conducting secondary review of the records, the local health department shall review the Primary Review Summary for mathematical accuracy. Any errors should be corrected by contacting the affected school or facility. The local health department shall review each child's record that was received for appropriate medical or religious exemptions and then use the Primary Review Table to determine each child's current immunization status for each of the required vaccines, i.e., complete, up-to-date, or incomplete.

(3) The local health department shall indicate on the Primary Review Summary form those children whose records are judged to be:

(a) Complete;

(b) Up-to-date, listing the date that the next required vaccine is due; or

(c) Medically exempt, and whether temporary or permanent.

(4) In the event that any of the above records are original documents, the local health department shall return such records to the administrator.

(5) The local health department shall initiate exclusion procedures for those children whose records are judged to have insufficient information or incomplete immunizations.

(6) Additional secondary review cycles with specific time frames are allowable for incomplete or insufficient records as mutually agreed upon in writing by the affected local health department and school or facility. Exclusion dates shall be no less than 14 calendar days from the date that the Exclusion Orders were mailed.

(7) It is the responsibility of the local health department to see that secondary review of immunization records is accomplished according to these rules. All or part of the actual review may be delegated by mutual agreement of parties affected to a third party subject to this requirement.

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

Stat. Auth.: ORS 433.004 & 433.273

Stats. Implemented: ORS 433.001, 433.004, 443.006 & 433.235 - 433.284

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 23-1981, f. & ef. 11-17-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0045; OHD 26-2001, f. & cert. ef. 12-4-01; PH 12-2007, f. & cert. ef. 9-27-07; PH 6-2008, f. & cert. ef. 3-17-08

333-050-0080

Exclusion

(1) Exclusion occurs when records have not been received or updated by the starting time of the school or facility on the specified exclusion day.

(2) The local health department may use an Exclusion Order for Incomplete Immunization or Insufficient Information or an Exclusion Order for No Record depending upon the reason the child is found to be in non-compliance with ORS 433.267(1) and these rules:

(a) No later than 21 calendar days from the date that the secondary review began, the local health department shall mail by first class mail an appropriately completed and signed order of exclusion to the parent of each child determined to be out of compliance with these rules. If a student is listed by the school as the "person responsible," the Exclusion Order will be sent to the student. In the event that the local health department has knowledge that the address of the parent provided on the Primary Review Summary form is incorrect, the local health department shall use all reasonable means to notify the parent, including inquiries to the school or facility administrator, to establish the appropriate mailing address and sending home from the school a copy of the Exclusion Order with the child. After all reasonable means have been exhausted, the administrator shall exclude the child on the stated exclusion date. For all orders issued, one copy of the Exclusion Order shall be sent to the administrator and the local health department shall retain one copy. The local health department shall also retain copies of the records of children to be excluded until notification from the school or facility that such children are in compliance.

(b) The local health department shall indicate on the Primary Review Summary form the status of each child whose records it reviewed and shall submit a copy of that form to the administrator along with copies of Exclusion Orders issued.

(c) The date of exclusion shall be 35 calendar days from the date that the secondary review began. If additional exclusion cycles are conducted, the exclusion dates shall be set at no less than 14 calendar days from the date that the Exclusion Orders are mailed.

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(d) For children excluded for insufficient information and/or incomplete immunizations, compliance will be achieved by submitting to the administrator one of the statements allowed in OAR 333-050-0040(1)(d);

(e) For children excluded for no record, compliance will be achieved by submitting to the administrator evidence of immunizations which includes at least one dose of each vaccine required for that grade or age, or a medical, immunity or religious exemption.

(f) When the administrator verifies that the required information has been provided or that an appropriate medical, immunity and/or religious exemption has been provided, the child shall be in compliance with ORS 433.267(1) and these rules and qualified for school or facility attendance.

(g) On the specified date of exclusion, the administrator shall exclude from school or facility attendance all children so ordered by the local health department until the requirements specified by the local health department are verified by the administrator.

(h) The local health department shall maintain copies of immunization records of children excluded and shall maintain contact with administrators regarding the status of such children.

(3) If children whose records are not updated on the specified exclusion day arrive at their school or facility, the administrator shall make every effort to contact their parent by phone. The administrator shall place excluded children in a space away from the other children until their parent arrives to pick them up or until they are returned home by regular school district transportation.

(4) If the excluded children do not meet the requirements specified by the local health department and do not return to school within four school days, it is the responsibility of the public school administrator, as proper authority, to notify the attendance supervisor of the unexcused absence. The attendance supervisor is required to proceed as required in ORS 339.080 and 339.090.

(5) Children who have been issued an Exclusion Order are not entitled to begin or continue in attendance in any school or facility in Oregon while the Exclusion Order is still in effect. Administrators who receive, or are otherwise made aware of the records of a child from another school or facility containing an Exclusion Order, which has not been cancelled, shall notify the parent and immediately exclude the child until the requirements specified on the Exclusion Order are met and verified by the administrator.

(6) Twelve calendar days after the mandatory February exclusion date, the administrator shall ensure: that the Primary Review Summary form returned from the local health department is updated by appropriately marking the current status of each child as specified (including children listed as having no record); that the mathematics on the Primary Review Summary form are accurate; and that a copy of the revised Primary Review Summary form is forwarded to the local health department on that day by first class mail or hand delivery. The administrator shall maintain a file copy of the updated Primary Review Summary form.

(7) The local health department shall review the updated Primary Review Summary form for mathematical accuracy. Any errors should be corrected by contacting the affected school or facility.

Stat. Auth.: ORS 433.004 & 433.273

Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 23-1981, f. & ef. 11-17-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0050; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06; PH 12-2007, f. & cert. ef. 9-27-07; PH 6-2008, f. & cert. ef. 3-17-08

333-050-0090

Review of Exclusion Orders

(1) If a parent believes an Exclusion Order is in error, the parent shall contact the local health department and request that the local health department review and re-check the information to determine the accuracy of the Exclusion Order.

(2) A local health department shall review and re-check a child's immunization records upon receipt of a request by a parent.

(3) If the Exclusion Order is found by the local health department to be in error, or if compliance is achieved pursuant to OAR 333-050-0080(1)(d) or (e), the Exclusion Order shall be rescinded.

Stat. Auth.: ORS 433.004 & 433.273

Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284

Hist.: HD 2-1982, f. & ef. 2-4-82; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0051; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06; PH 12-2007, f. & cert. ef. 9-27-07; PH 6-2008, f. & cert. ef. 3-17-08

333-050-0095

School/Facility Compliance

(1) In the event that a school or facility fails to comply with these rules, the local health department shall make a verbal, documented contact with the non-compliant school or facility that covers:

(a) The specific requirements of the state's immunization law and rules; and

(b) Establishes a four-working-day time frame for the school or facility administrator to comply.

(2) If the school or facility still fails to comply, the local health department shall notify the Public Health Division of the name and address of the school or facility.

(3) The local health department shall send to the Public Health Division, via mail, electronic mail or facsimile, documentation of contacts made with the non-compliant school or facility.

(4) Within six calendar days of notification by the local health department, the Public Health Division shall send a certified letter to the non-compliant school or facility that:

(a) Notifies the school or facility that it is out of compliance and how it is out of compliance with the immunization law and rules;

(b) Establishes seven calendar days to comply before the matter is referred to the Attorney General's office; and

(c) Notifies the school or facility that a civil penalty may be imposed if the school or facility does not comply within seven calendar days.

(5) The Public Health Division shall send copies of the letter to the Child Care Division of the Employment Department, the Department of Education and/or the school district superintendent as appropriate.

(6) The Public Health Division shall notify the local health department of the new due date for compliance.

(7) If the school or facility does not comply by the new due date, the local health department shall notify the Public Health Division.

(8) The Public Health Division may impose a civil penalty on a school or facility does not comply with the immunization law or rules after a notification of non-compliance. Civil penalties will be imposed as follows:

(a) One day late in complying: \$100;

(b) Two days late in complying: \$200;

(c) Three days late in complying: \$300;

(d) Four days late in complying: \$400;

(e) Five days or more late in complying: \$500 per day until there is compliance.

(9) A notice of imposition of civil penalties shall comply with ORS 183.745.

(10) The Public Health Division shall forward all documentation of contacts to the Attorney General's office for action if the school or facility does not comply by the new date.

Stat. Auth.: ORS 431.262, 433.004, 433.273

Stats. Implemented: ORS 431.262, 433.001, 433.004, 433.006 & 433.235 - 433.284

Hist.: OHD 26-2001, f. & cert. ef. 12-4-01; PH 12-2007, f. & cert. ef. 9-27-07; PH 6-2008, f. & cert. ef. 3-17-08

333-050-0100

Follow Up

(1) In the event that the local health department receives records that are original documents from a school or facility, the local health department shall return such records to the administrator.

(2) The administrator shall be responsible for updating records each time the parents, health care practitioner, or an authorized representative of the local health department provides evidence of immunization and/or exemption on each child.

(3) When a person is diagnosed as having one of the following school or facility restrictable diseases:

(a) Diphtheria, Measles, Pertussis, Rubella, Hepatitis A, Varicella or, in children's facilities only, Polio, the local health officer (or designee) may exclude from any school or facility in his or her jurisdiction, any student and/or employee who is susceptible to that disease.

(b) More information on disease restrictions for schools and facilities can be found in OAR 333-019-0010 and 333-019-0014.

(4) The administrator shall maintain a system to track and report susceptible persons. The local health department may request that the list of susceptible persons be sorted by disease susceptibility, classroom, grade, and/or school. The administrator will provide the list within one calendar day of the local health department's request in order to facilitate appropriate disease control measures.

(5) The local health department and/or the Public Health Division may conduct school or facility record validation surveys to ensure compliance with ORS 433.235 through 433.280 and these rules.

ADMINISTRATIVE RULES

(6) The local health department may issue Exclusion Orders as needed for compliance with these rules during the validation survey process.

(7) The Public Health Division may issue Exclusion Orders when the Public Health Division is the recognized Public Health Authority in the county.

Stat. Auth.: ORS 433.004 & 433.273
Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284
Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0055; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06; PH 12-2007, f. & cert. ef. 9-27-07; PH 6-2008, f. & cert. ef. 3-17-08

333-050-0110

Annual Reporting Requirements

(1) The local health department shall submit a County Immunization Status Report to the Public Health Division annually no later than 23 calendar days after the third Wednesday in February.

(2) On or before the last day of March, the Public Health Division shall publicize a summary of the immunization status of children attending schools and facilities for each county.

Stat. Auth.: ORS 433.004 & 433.273
Stats. Implemented: ORS 433.001, 433.004, 443.006 & 433.235 - 433
Hist.: HD 21-1981, f. & ef. 10-21-81; HD 23-1981, f. & ef. 11-17-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0060; OHD 26-2001, f. & cert. ef. 12-4-01; PH 12-2007, f. & cert. ef. 9-27-07; PH 6-2008, f. & cert. ef. 3-17-08

333-050-0120

Immunizations Schedules for Spacing of Doses

See **Primary Review Table** for the judgment of compliance or non-compliance with the required immunizations.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 433.004 & 433.273
Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284
Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 22-1983, f. & ef. 11-1-83; HD 15-1986, f. & ef. 7-15-86; HD 4-1990(Temp), f. & cert. ef. 1-11-90; HD 10-1991, f. & cert. ef. 7-23-91; HD 12-1991(Temp), f. & cert. ef. 9-3-91; HD 16-1997, f. & cert. ef. 12-3-97; OHD 8-1998, f. & cert. ef. 9-10-98; OHD 12-2000, f. & cert. ef. 12-26-00; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0070; PH 12-2007, f. & cert. ef. 9-27-07; PH 1-2008(Temp), f. & cert. ef. 1-8-08 thru 6-30-08; PH 6-2008, f. & cert. ef. 3-17-08

333-050-0130

Second Dose Measles in Post Secondary Educational Institution

(1) Each post-secondary education institution, except a community college and a private, proprietary vocational school, shall require that each entering full-time student born on or after January 1, 1957, has two doses of measles vaccine prior to the student's second quarter or semester of enrollment on an Oregon campus, using procedures developed by the institution.

(2) For students subject to subsection (1) of this rule who are attending the institution pursuant to a non-immigrant visa, documentation of measles vaccination must be provided prior to the student attending classes. If the student's first dose of measles vaccine was received less than 30 days prior to attendance, the student has until the beginning of the second term or semester to provide documentation of the second dose.

(3) The following records may be accepted as adequate proof of two doses of measles vaccine:

(a) Written documentation by student, health care practitioner, or an authorized representative of the local health department of the month and year of each dose, on or after the first birthday, with a minimum of 28 days between the first and second dose;

(b) No available month and year for the first dose but written documentation by student, health care practitioner, or an authorized representative of the local health department of the month and year of the second dose in or after December, 1989;

(c) An unsigned record printout from the statewide immunization information system, Oregon Immunization ALERT; or

(d) An unsigned record printout from a computer system approved by the Public Health Division as specified in OAR 333-050-0060(5).

(4) Each post-secondary education institution under the jurisdiction of the law shall include a medical, immunity and religious exemption.

(5) Each post-secondary educational institution under the jurisdiction of the law shall develop procedures to implement and maintain this requirement.

(6) The Public Health Division may conduct validation surveys to ensure compliance.

(7) A student shall not be excluded from a post-secondary institution for failing to receive a required vaccine if the State Health Officer has determined that there is a vaccine shortage and that is the reason the student has not received the vaccine. Any vaccine that has been waived due to a vaccine shortage will be required at the next term or semester, once the shortage has been lifted.

(8) The local public health officer, after consultation with the Public Health Division, may allow a student to attend an educational institution without meeting the minimum immunization requirements in case of temporary local vaccine shortage.

(a) The local health department shall provide a letter signed by the local health officer to the affected student stating that the vaccine requirement is being postponed. The letter must give guidance to the post-secondary institution about when vaccine is expected to be available.

(b) A photocopied form letter signed by the local health officer may be used by the local health department when the shortage is expected to affect more than one student.

Stat. Auth.: ORS 433.004, 433.273 & 433.282
Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284
Hist.: HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0080; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 1-2006, f. & cert. ef. 1-27-06; PH 12-2007, f. & cert. ef. 9-27-07; PH 6-2008, f. & cert. ef. 3-17-08

333-050-0140

Second Dose Measles in Community Colleges

(1) Each community college shall require that students involved in clinical experiences in allied health programs, practicum experiences in education and child care programs and membership on intercollegiate sports teams have two doses of measles vaccine prior to each student's participation. The requirement shall apply only to those students born on or after January 1, 1957, using procedures developed by the institutions.

(2) The following records may be accepted as adequate proof of two doses of measles vaccine:

(a) Written documentation by student, health care practitioner, or an authorized representative of the local health department of the month and year of each dose, on or after the first birthday, with a minimum of 28 days between first dose and second dose;

(b) No available month and year for the first dose but written documentation by student, health care practitioner, or an authorized representative of the local health department of the month and year of the second dose in or after December, 1989;

(c) An unsigned record printout from the statewide immunization information system, Oregon Immunization ALERT; or

(d) An unsigned record printout from a computer system approved by the Public Health Division as specified in OAR 333-050-0060(5).

(3) Each community college under the jurisdiction of the law shall include a medical, immunity and religious exemption.

(4) Each community college shall develop procedures to implement and maintain this requirement.

(5) The Public Health Division may conduct validation surveys to ensure compliance.

(6) A student shall not be excluded from a community college for failing to receive a required vaccine if the State Health Officer has determined that there is a vaccine shortage and that is the reason the student has not received the vaccine. Any vaccine that has been waived due to a vaccine shortage will be required at the next term or semester, once the shortage has been lifted.

(7) The local public health officer, after consultation with the Public Health Division, may allow a student to attend an educational institution without meeting the minimum immunization requirements in case of temporary local vaccine shortage.

(a) The local health department shall provide a letter signed by the local health officer to the affected student stating that the vaccine requirement is being postponed. The letter must give guidance to the community college about when vaccine is expected to be available.

(b) A photocopied form letter signed by the local health officer may be used by the local health department when the shortage is expected to affect more than one student.

Stat. Auth.: ORS 433.004, 433.273 & 433.282
Stats. Implemented: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284
Hist.: HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0090; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05; PH 12-2007, f. & cert. ef. 9-27-07; PH 6-2008, f. & cert. ef. 3-17-08

ADMINISTRATIVE RULES

Rule Caption: Farm Direct Nutrition Program.

Adm. Order No.: PH 7-2008

Filed with Sec. of State: 4-3-2008

Certified to be Effective: 4-3-08

Notice Publication Date: 2-1-2008

Rules Amended: 333-052-0030, 333-052-0040, 333-052-0050, 333-052-0060, 333-052-0065, 333-052-0070, 333-052-0075, 333-052-0080, 333-052-0090, 333-052-0100, 333-052-0110, 333-052-0120, 333-052-0130

Subject: The Department of Human Service, Public Health Division is amending rules in OAR 333-052 to incorporate the Senior Farm Direct Nutrition Program regulations allowing the Department to meet federal requirements.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-052-0030

Program Overview

(1) The purpose of the Farm Direct Nutrition Program (FDNP) is to:

(a) Provide locally grown, fresh, nutritious, unprepared fruits and vegetables to women, infants over five months of age, and children, who participate in the special supplemental nutrition program for women, infants, and children (WIC) and to low income seniors; and

(b) Expand the awareness and use of farmers' markets and farm stands where consumers can buy directly from the farmer.

(2) FDNP is administered by the Department of Human Services (DHS) in partnership with the Oregon Department of Agriculture.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08

333-052-0040

Definitions

(1) "Adequate Participant Access" means there are authorized farmers sufficient for participant need.

(2) "Agreement," means a written legal document binding the market or farmer and DHS to designated terms and conditions.

(3) "Authorized" or "authorization," means an eligible farmer or farmers' market has met the selection criteria and signed an agreement with DHS allowing participation in FDNP, and is not currently disqualified.

(4) "Check," means a negotiable financial instrument by which FDNP benefits are provided to participants.

(5) "CMP," means a civil money penalty.

(6) "DHS," means the Department of Human Services.

(7) "Disqualification," means the act of terminating the agreement of an authorized farmers' market, or farmer from the FDNP for noncompliance with program requirements.

(8) "Eligible foods," means fresh, nutritious, unprepared, locally grown fruits and vegetables and culinary herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. For example, checks cannot be used for honey, maple syrup, cider, nuts, seeds, plants, eggs, meat, cheese and seafood.

(9) "Farmer," means an individual who owns, leases, rents or share-crops land to grow, cultivate or harvest crops on that land.

(10) "Farm Direct Nutrition Program" or "FDNP," means the Farmers' Market Nutrition Program administered by the United States Department of Agriculture, Food and Nutrition Services and implemented by the State of Oregon.

(11) "Farmers' Market," means a group of five or more farmers who assemble over the course of a year at a defined location for the purpose of selling their eligible produce directly to consumers.

(12) "Farm Stand," means a location at which a farmer sells produce directly to consumers.

(13) "FDNP Participant" or "participant" means a senior participant or a WIC participant receiving FDNP benefits.

(14) "Fine," means a monetary penalty imposed against the farmer for non-compliance of FDNP rules.

(15) "Locally grown," means grown in the state of Oregon or in the following counties of a contiguous state: California — Del Norte, Modoc, Siskiyou; Idaho — Adams, Canyon, Idaho, Owyhee, Payette, Washington; Nevada — Humboldt, Washoe; Washington — Asotin, Benton, Clark, Columbia, Cowlitz, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla Walla.

(16) "Local WIC agency," means the agency or clinic where a participant receives WIC services and FDNP checks.

(17) "Market," means a farmers' market that has a signed agreement with DHS to participate in the FDNP.

(18) "Market Coordinator," means an individual designated by the farmers' market manager (or market board members) responsible for overseeing the market's participation in the FDNP.

(19) "Market Season" means the time period in which FDNP checks may be transacted as determined by DHS.

(20) "Senior Participant" means an individual who is over 60 years of age, meets all the eligibility components of the program and who receives FDNP checks.

(21) "Trafficking," means the buying or exchanging of FDNP checks for cash, drugs, firearms or alcohol.

(22) "USDA" means the United States Department of Agriculture.

(23) "Validating," means stamping the FDNP check in the designated box with the farmer identification number using the stamp provided by DHS.

(24) "Violation," means an activity that is prohibited by OAR 333-052-0030 through 333-052-0090 and classified in 333-052-0080 through 333-052-0130.

(25) "WIC" or "WIC program" means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C. §1786.

(26) "WIC participant" means any pregnant, breastfeeding, or post-partum woman, infant, or child who receives WIC benefits.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08

333-052-0050

Eligible Foods

(1) FDNP checks may be used to purchase only eligible foods.

(2) Ineligible items include, but are not limited to:

(a) Baked goods, cheeses, cider, crafts, dairy products, dried fruits, dried herbs, dried vegetables, eggs, flowers, fruit juices, honey, jams, jellies, meats, nuts, plants of any kind, potted herbs, seafood, seeds, and syrups.

(b) Fresh fruits and vegetables that are not locally grown.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08

333-052-0060

Farmer Participation

(1) Only authorized farmers may accept FDNP checks from participants in exchange for eligible foods. Authorized farmers may not accept checks from unauthorized farmers.

(2) In order to be eligible for participation in the FDNP, a farmer applicant must:

(a) Grow, cultivate, or harvest fresh fruits, vegetables and cut herbs in Oregon or a bordering county in a contiguous state to sell to FDNP participants;

(b) Sell at an authorized market or an authorized farm stand;

(c) Complete the farmer application and return it to the Oregon Department of Agriculture to verify eligibility; and

(d) Agree to follow the terms and conditions of the farmer agreement.

(3) Applications will be used to determine authorization for FDNP.

(4) DHS and the FDNP are not required to authorize all applicants.

(5) Any individual who purchases all the produce they plan to sell is considered a distributor and is not allowed to participate in the FDNP.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08

333-052-0065

Farmer Agreements

(1) A farmer application/agreement must be signed by a representative who has legal authority to obligate the farmer.

(2) The farmer agreement must include a requirement that the farmer comply with OAR 333-052-0030 to 333-052-0130, as applicable to farmers.

(3) The farmer application/agreement will be valid for one market season.

(4) Neither DHS nor the farmer is obligated to renew the agreement.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08

ADMINISTRATIVE RULES

333-052-0070

Market Participation

(1) In order to be eligible for participation in the FDNP a farmers' market applicant must:

(a) Designate an individual to be the FDNP market coordinator who will be on-site during operating hours;

(b) Have a minimum of five authorized farmers participating in the market each year;

(c) Operate on a consistent basis over the course of the season; and

(d) Agree to comply with all terms and conditions specified in the FDNP agreement.

(2) DHS and the FDNP are not required to authorize all applicants.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08

333-052-0075

Farmers' Market Agreements

(1) A farmers' market application/agreement must be signed by a representative who has legal authority to obligate the market.

(2) The application/agreement must include a requirement that the market:

(a) Comply with OAR 333-052-0030 to 333-052-0130, as applicable to markets;

(b) Furnish the necessary personnel and services to conduct market activities; and

(c) Do all things necessary for or incidental to the performance of the work set forth in the application/agreement.

(3) The market application/agreement will be valid for one market season.

(4) Neither DHS nor the market has an obligation to renew an agreement.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08

333-052-0080

Farmer Participation Requirements, Violations and Sanctions

(1) An authorized farmer must:

(a) Comply with FDNP requirements contained in 7 CFR 248 and 7 CFR 249 and the terms and conditions of the farmer application/agreement;

(b) Accept training on FDNP requirements and ensure that all individuals working in the farmer's stall at the farmers' market and/or farm stand are trained;

(c) Accept FDNP checks:

(A) For eligible foods only; and

(B) Within the valid dates of the program.

(d) Prominently display the official FDNP sign provided by DHS on each day of operation when at authorized farmers' markets and/or authorized farm stands;

(e) Provide FDNP clients with the full amount of product for the value of each FDNP check;

(f) Cooperate with staff from DHS or the Oregon Department of Agriculture in monitoring for compliance with program requirements and provide information that DHS or the Oregon Department of Agriculture may require;

(g) Comply with all state or federal laws regarding non-discrimination, and applicable USDA instructions to ensure that no individual will, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the FDNP;

(h) Ensure that FDNP shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;

(i) Assure that all FDNP checks are stamped with the farmer's DHS-assigned identification number and properly endorsed before cashing or depositing at the farmer's financial institution;

(j) Deposit or cash FDNP checks at the authorized farmer's financial institution by the date determined by DHS;

(k) Reimburse DHS for FDNP checks that are improperly transacted;

(l) Respond to requests, implement corrective action, and comply with the terms in final orders as directed by DHS;

(m) Not provide credit in exchange for FDNP checks;

(n) Not charge sales tax on FDNP check purchases;

(o) Not seek restitution from FDNP participants for a check not paid by DHS;

(p) Not give cash back for purchases that amount to less than the value of a check (providing change);

(q) Not use FDNP checks for any purpose other than deposit or cash at their financial institution; and

(r) Not accept FDNP checks from unauthorized farmers.

(2) A Farmer is in violation of the FDNP if the farmer:

(a) Fails to:

(A) Comply with FDNP rules and the terms and conditions of the farmer application/agreement;

(B) Accept training on FDNP requirements and ensure that all individuals working in the Farmer's stall at the farmers' market and/or farm stand are trained;

(C) Prominently display the official FDNP sign provided by DHS on each day of operation when at authorized farmers' markets or authorized farm stands;

(D) Provide FDNP clients with the full amount of product for the value of each FDNP check;

(E) Comply with all state or federal laws regarding non-discrimination, and applicable USDA instructions to ensure that no individual will, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the FDNP;

(F) Ensure that FDNP shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;

(G) Assure that all FDNP checks are stamped with the farmer's DHS-assigned identification number and properly endorsed before cashing or depositing at the farmer's financial institution;

(H) Deposit or cash FDNP checks at the authorized farmer's financial institution by the date determined by DHS;

(I) Reimburse DHS for FDNP checks that are improperly transacted;

(J) Cooperate with staff from DHS or the Oregon Department of Agriculture in monitoring for compliance with program requirements and provide information that DHS or the Oregon Department of Agriculture may require;

(K) Respond to requests, implement corrective action, or comply with the terms in final orders as directed by DHS.

(b) Accepts FDNP checks:

(A) For ineligible foods;

(B) For invalid dates; or

(C) From an unauthorized farmer.

(c) Provides credit in exchange for FDNP checks;

(d) Charges sales tax on FDNP check purchases;

(e) Seeks restitution from FDNP participants for a check not paid by DHS;

(f) Gives cash back for purchases that amount to less than the value of a check (providing change);

(g) Uses FDNP checks for any purpose other than deposit or cash at their financial institution.

(3) Farmer Sanctions:

(a) DHS may issue a notification of non-compliance to an authorized farmer for an initial incident of:

(A) Accepting FDNP checks for ineligible foods;

(B) Failing to prominently display the official sign provided by DHS, each market day when at authorized farmers' markets or authorized farm stands;

(C) Failing to provide FDNP clients with the full amount of product for the value of each FDNP check;

(D) Failing to ensure that FDNP shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;

(E) Failing to reimburse DHS for FDNP checks that are improperly transacted;

(F) Charging sales tax on FDNP check purchases;

(G) Seeking restitution from FDNP participants for checks not paid by DHS;

(H) Giving cash back for purchases less than the value of the checks (providing change);

(I) Accepting FDNP checks from an unauthorized farmer;

(J) Failing to respond to requests, implement corrective action, or comply with the terms in final orders as directed by DHS;

(K) Using FDNP checks for any purpose other than deposit or cash at the authorized farmer's financial institution; and

(L) Failing to cooperate with staff from DHS or the Oregon Department of Agriculture in monitoring for compliance with program

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requirements and failing to provide information that DHS or the Oregon Department of Agriculture may require.

(b) DHS may disqualify a farmer for four season months, which may cross from the year during which the violation occurred into the following year for an initial incident of providing credit in exchange for FDNP checks.

(c) DHS may disqualify a farmer for four season months, which may cross from the year during which the violation occurred into the following year, for second or subsequent incidents of:

(A) Accepting FDNP checks for ineligible foods;

(B) Failing to prominently display the official sign provided by DHS, each market day when at authorized farmers' markets and/or authorized farm stands;

(C) Failing to provide FDNP clients with the full amount of product for the value of each FDNP check;

(D) Failing to ensure that FDNP shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;

(E) Charging sales tax on FDNP check purchases;

(F) Seeking restitution from FDNP participants for checks not paid by DHS;

(G) Using FDNP checks for any purpose other than deposit or cash at the authorized farmer's financial institution;

(H) Charging FDNP participants higher prices than other customers;

(I) Giving cash back for purchases less than the value of the checks (providing change);

(J) Accepting FDNP checks from an unauthorized farmer; and

(K) Failing to respond to requests, implement corrective action, or comply with the terms in final orders as directed by DHS.

(d) DHS may not authorize farmers to accept FDNP checks the season following second or subsequent incidents of:

(A) Failing to reimburse DHS for FDNP checks that are improperly transacted; or

(B) Failing to cooperate with staff from DHS or the Oregon Department of Agriculture in monitoring for compliance with program requirements and failing to provide information required to be submitted by DHS or the Oregon Department of Agriculture.

(e) DHS may immediately disqualify a farmer from the FDNP program for the remainder of the current season and the entire following season for an initial incident of:

(A) Trafficking in FDNP checks (exchanging checks for cash, controlled substances, tobacco products, firearms or alcohol) in any amount; or

(B) A USDA substantiated violation of laws regarding non-discrimination, and applicable USDA instructions.

(f) Checks accepted outside the valid dates of the program will be rejected for payment;

(g) FDNP checks that are not stamped with the farmer's DHS-assigned identification number will be returned to the farmer without payment;

(h) FDNP checks cashed outside the dates determined by DHS will not be reimbursed; and

(i) FDNP checks redeemed by a farmer who has not been authorized will not be reimbursed.

(4) Farmers who do not comply with FDNP requirements are subject to sanctions, including fines, in addition to, or in lieu of, disqualification.

(a) Prior to disqualifying a farmer, DHS may determine if disqualification of the farmer would result in inadequate participant access. If DHS determines that disqualification of the farmer would result in inadequate participant access, DHS may impose a CMP in lieu of disqualification in the amount of 5% of the farmer's previous season FDNP sales or \$250.00, whichever is greater.

(b) DHS must give written notice to a farmer of an action proposed to be taken against a farmer, not less than fifteen days before the effective date of the action. The notice must state what action is being taken, the effective date of the action, and the procedure for requesting a hearing.

(c) A farmer that has been disqualified from the FDNP may reapply at the end of the disqualification period.

(d) DHS may accept a farmer's voluntary withdrawal from the program as an alternative to disqualification. If a farmer chooses to withdraw in lieu of disqualification, the farmer may not apply for participation until the following year.

(e) DHS will not reimburse farmers who have been disqualified or have withdrawn in lieu of disqualification.

(f) Fines must be paid to DHS within the time period specified in the Notice.

(5) A farmer who commits fraud or abuse of the FDNP is subject to prosecution under applicable federal, state or local laws.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08

333-052-0090

Market Participation Requirements, Violations and Sanctions

(1) An authorized market must:

(a) Comply with FDNP requirements contained in 7 CFR 248 and 7 CFR 249, FDNP rules, and the terms and conditions of the market application/agreement;

(b) Ensure that an authorized farmer is present at the market during all market hours of operation;

(c) Accept training on FDNP procedures and provide such training to market staff including volunteers and eligible farmers on behalf of DHS;

(d) Cooperate in DHS investigations of authorized farmers who:

(A) Redeem checks for ineligible foods;

(B) Charge FDNP customers higher prices than other customers;

(C) Accept checks outside the DHS determined market season;

(D) Give change for food purchased with FDNP checks (providing change);

(E) May not meet the definitions of "eligible farmer;" and

(F) Abuse any other Program procedures.

(e) Comply with all state or federal laws regarding non-discrimination, and applicable USDA instructions to ensure that no individual will, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the FDNP;

(f) Cooperate with staff from DHS or the Oregon Department of Agriculture in monitoring for compliance with program requirements and provide information required to be submitted by DHS or the Oregon Department of Agriculture may require; and

(g) Respond to requests, implement corrective action, and comply with the terms in final orders as directed by DHS.

(2) A market is in violation of the FDNP rules if the market fails to:

(a) Ensure that an authorized farmer is present at the market during all market hours of operation;

(b) Accept training on FDNP procedures and provide such training to market staff including volunteers and eligible farmers on behalf of DHS;

(c) Cooperate in DHS investigations of authorized farmers;

(d) Comply with all state or federal laws regarding non-discrimination, and applicable USDA instructions to ensure that no individual will, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the FDNP;

(e) Cooperate with staff from DHS or the Oregon Department of Agriculture in monitoring for compliance with program requirements and provide information that DHS or the Oregon Department of Agriculture may require; and

(f) Respond to requests, implement corrective action, and comply with the terms in final orders as directed by DHS.

(3) Market sanctions:

(a) DHS may issue a notice of non-compliance to an authorized market for an initial incident of failing to:

(A) Ensure that an authorized farmer is present at the market during all market hours of operations;

(B) Accept training on FDNP procedures and provide such training to market staff including volunteers and eligible farmers on behalf of DHS;

(C) Cooperate in DHS investigations of authorized farmers;

(D) Cooperate with staff from DHS or the Oregon Department of Agriculture in monitoring for compliance with program requirements and provide information that DHS or the Oregon Department of Agriculture may require; and

(E) Respond to requests, implement corrective action, and comply with the terms in final orders as directed by DHS.

(b) A market may not be authorized the following year if, within the current season, there is a second or subsequent occurrence of failing to:

(A) Ensure that an authorized farmer is present at the market during all market hours of operations;

(B) Accept training on FDNP procedures and provide such training to market staff including volunteers and eligible farmers on behalf of DHS;

(C) Cooperate in DHS investigations of authorized farmers;

(D) Cooperate with staff from DHS or the Oregon Department of Agriculture in monitoring for compliance with program requirements and

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failing to provide information required to be submitted by DHS or the Oregon Department of Agriculture; and

(E) Respond to requests, implement corrective action, and comply with the terms in final orders as directed by DHS.

(c) DHS may immediately disqualify a market from the FDNP program for the remainder of the current season and the entire following season for an initial incident of a USDA substantiated violation of laws regarding non-discrimination, and applicable USDA instructions.

(4) Markets who do not comply with FDNP requirements are subject to sanctions.

(a) Prior to disqualifying a market, DHS must consider whether the disqualification would result in inadequate FDNP participant access;

(b) DHS must give written notice to a market of an action proposed to be taken against a market, not less than fifteen days before the effective date of the action. The notice must state what action is being taken, the effective date of the action, and the procedure for requesting a hearing;

(c) A market that has been disqualified from the FDNP may reapply at the end of the disqualification period; and

(d) DHS may accept a market's voluntary withdrawal from the program as an alternative to disqualification. If a market chooses to withdraw in lieu of disqualification, the market may not apply for participation until the following year.

(5) A market that commits fraud or abuse of the FDNP is subject to prosecution under applicable federal, state or local laws.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08

333-052-0100

DHS Responsibilities

DHS must:

(1) Administer the Farmers' Market Nutrition Program in accordance with 7 CFR 248, and the Senior Farmers' Market Nutrition Program in accordance with 7 CFR 249 (under the collective name of Oregon FDNP).

(2) Distribute or facilitate distribution of FDNP checks to participants.

(3) Assure payment to farmers for properly redeemed FDNP checks.

(4) Assure that annual training is provided to all authorized farmers.

(5) Assure that training is provided to new market managers and farmers who are new to the FDNP.

(6) Assure that "Oregon Farm Direct Nutrition Checks Welcome Here" signs are provided to authorized farmers.

(7) Monitor farmers and markets for compliance with FDNP rules and agreements, and if necessary, impose sanctions.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08

333-052-0110

Monitoring

(1) DHS must monitor farmers and markets for compliance with applicable laws and rules, including on-site investigation of randomly selected farmers and markets.

(2) DHS may conduct covert compliance buys of FDNP authorized farmers for compliance with DHS rules and regulations.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08

333-052-0120

Complaints

(1) Any farmer or market manager wishing to file a complaint against a FDNP participant, an authorized farmer, an authorized market, or the FDNP Program may do so in the following manner:

(a) Write to or use the comment form, given to participating markets and local WIC agencies, and send the form to WIC Compliance Coordinator at 800 NE Oregon St., Suite 865, Portland, Oregon, 97232; or

(b) Call the state WIC office.

(2) A local WIC clinic or market manager may file a complaint on behalf of an individual who does not want to file a complaint independently.

(3) When DHS receives a complaint alleging discrimination on the basis of race, color, national origin, age, sex or disability DHS must automatically forward the complaint to USDA for investigation.

(4) Individuals alleging discrimination on the basis of race, color, national origin, age, sex or disability may also write directly to USDA, Director, Office of Civil Rights, 1400 Independence Avenue SW,

Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).

(5) DHS may refer complaints regarding farmers or markets to the Oregon Department of Agriculture for investigation.

(6) The identity of any individual filing a complaint will be kept confidential except to the extent necessary to conduct any investigation, hearing or judicial proceeding regarding the complaint.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08

333-052-0130

Appeals

(1) Markets and farmers are entitled to a hearing as provided by the Administrative Procedures Act (ORS Chapter 183) for a denial of participation, imposition of a sanction, or disqualification.

(2) Markets and farmers may not be entitled to a hearing under the Administrative Procedures Act to challenge:

(a) The validity or appropriateness of DHS' selection criteria for farmer or market participation;

(b) The validity or appropriateness of DHS' participant access determinations;

(c) The duration or expiration of a farmer or market agreement; or

(d) A DHS decision regarding a check payment or claims.

(3) DHS may, at its discretion, permit the market or farmer to continue participating in the program pending the outcome of an administrative hearing. The farmer may be required to repay funds for FDNP checks redeemed during the pendency of the hearing, depending on the hearing outcome.

(4) A request for a hearing must be in writing and must be received within thirty (30) days from the date of the notice describing the proposed action.

(5) The request for hearing must include:

(a) The name and address of the farmer or market requesting the hearing;

(b) The name and address of the attorney representing the farmer or market, if any;

(c) The decision made or action taken by DHS against the farmer or market;

(d) The reason the farmer or market disagrees with the decision or action;

(e) Any special needs or requirements, such as, an interpreter or other special accommodations; and

(f) An attached copy of the notice from DHS.

(6) If a hearing is requested under subsection (1) of this rule, a final written decision must be made within sixty (60) days from the date the request for a hearing was received by the WIC Operations Manager. The time for issuing a decision may be extended upon agreement by the parties.

Stat. Auth.: ORS 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08

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

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

Adm. Order No.: SPD 4-2008(Temp)

Filed with Sec. of State: 4-1-2008

Certified to be Effective: 4-1-08 thru 9-24-08

Notice Publication Date:

Rules Adopted: 411-030-0100

Rules Amended: 411-030-0020, 411-030-0040, 411-030-0050, 411-030-0070

Rules Suspended: 411-036-0000, 411-036-0010, 411-036-0020, 411-036-0030, 411-036-0040, 411-036-0045, 411-036-0050, 411-036-0060, 411-036-0070, 411-036-0080, 411-036-0090, 411-036-0100, 411-036-0110, 411-036-0120, 411-036-0130, 411-036-0140

Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily suspending the Independent Choices Program (ICP) Demonstration Project rules in OAR chapter 411, division 036 and temporarily adopting OAR 411-030-0100 and amending various other rules in OAR chapter 411, division

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030 to reflect that the ICP is now a permanent statewide In-Home Services Program.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-030-0020

Definitions

As used in these rules:

(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 defined in OAR 411-015-0006.

(2) “Architectural Modifications” means any service leading to the alteration of the structure of a dwelling to meet a specific service need of the eligible individual.

(3) “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 ORS 410.210 through 410.300.

(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) “Business Days” means Monday through Friday and excludes Saturdays, Sundays and state or federal holidays.

(6) “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.

(7) “Client” or “Client-Employer” means the individual eligible for in-home services. “Individual” is synonymous with client.

(8) “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.

(9) “Client-Employed Provider Program (CEP)” refers to the program wherein the provider is directly employed by the client and provides either hourly or live-in services. In some aspects of the employer and employee relationship, the Department of Human Services acts as an agent for the client-employer. These functions are clearly described in OAR 411-031-0040.

(10) “Contracted In-Home Care Agency” means an incorporated entity or equivalent, licensed in accordance with OAR 333-536-0000 through OAR 333-536-0115 that provides hourly contracted in-home services to individuals served by the Department of Human Services or Area Agency on Aging.

(11) “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 include other programs available from the Department, the utilization of assistive devices, natural supports, architectural modifications and alternative service resources (defined in OAR 411-015-0005). Less costly alternatives may include resources not paid for by the Department.

(12) “Department” or “DHS” means the Department of Human Services.

(13) “Disenrollment” means either voluntary or involuntary termination of the participant from the Independent Choices Program.

(14) “Employment Relationship” means the relationship involving the provider and the participant as employee and employer.

(15) “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, OAR 411-027-0025 and OAR 411-027-0050. The term “exception” is synonymous with “exceptional rate” or “exceptional payment.”

(16) “FICA” is the acronym for the Social Security payroll taxes collected under authority of the Federal Insurance Contributions Act (FICA).

(17) “Financial Accountability” refers to guidance and oversight which act as fiscal safeguards to identify budget problems on a timely basis and allow corrective action to be taken to protect health and welfare of individuals.

(18) “FUTA” is the acronym for Federal Unemployment Tax Assessment which is a United States payroll (or employment) tax imposed by the federal government on both employees and employers.

(19) “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.

(20) “Hourly Services” means the in-home services, including activities of daily living and self-management tasks, that are provided at regularly scheduled times.

(21) “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.

(22) “Individualized Back-Up Plan” means a plan incorporated into the Independent Choices Program service plan to address critical contingencies or incidents that pose a risk or harm to the participant’s health and welfare.

(23) “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.

(24) “Liability” refers to the dollar amount individuals with excess income must contribute to the cost of service pursuant to OAR 461-160-0610 and OAR 461-160-0620.

(25) “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.

(26) “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.

(27) “Oregon Project Independence (OPI)” means the program of in-home services described in OAR chapter 411, division 032.

(28) “Participant” means an individual eligible for Independent Choices Program services.

(29) “Provider” means the individual who actually renders the service.

(30) “Rate Schedule” means the rate schedule published by SPD at <http://www.oregon.gov/DHS/spd/provtools/rateschedule.pdf>.

(31) “Representative” is a person either appointed by the individual to participate in service planning on their behalf or the individual’s natural support with longstanding involvement in assuring the individual’s health, safety and welfare. There are additional responsibilities for the Independent Choices Program representatives as described in OAR 411-030-0100.

(32) “Self-Management” or “Instrumental Activities of Daily Living (IADL)” means those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in self-management tasks are identified in OAR 411-015-0007.

(33) “Service Budget” means the participant’s plan for the distribution of authorized funds that are under the control and direction of the participant within the Independent Choices Program.

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(34) "Service Need" means the assistance an individual requires from another person for those functions or activities identified in OAR 411-015-0006 and OAR 411-015-0007.

(35) "SPD" or "Division" means the Seniors and People with Disabilities Division, within the Department of Human Services.

(36) "SUTA" is the acronym for State Unemployment Tax Assessment. State unemployment taxes are paid by employers to finance the unemployment benefit system that exists in each state.

(37) "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 person over a 24 hour period. These services are provided by a live-in employee and are exempt from federal and state minimum wage and overtime requirements.

(38) "Waivered 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 services to eligible individuals in place of nursing facility services. Waivered services include in-home services, residential care facility services, assisted living facility services, adult foster care services, home-delivered meals (when provided in conjunction with in-home services), specialized living services, Spousal Pay Program services and adult day services.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 5-1983, f. 6-7-83, ef. 7-1-83; SSD 3-1985, f. & ef. 4-1-85; SSD 5-1987, f. & ef. 7-1-87; SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SSD 6-1994, f. & cert. ef. 11-15-94; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 3-2007(Temp), f. 4-11-07, cert. ef. 5-1-07 thru 10-28-07; SPD 17-2007, f. 10-26-07, cert. ef. 10-28-07; SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-030-0040

Eligibility Criteria

(1) In-home services may be provided to those individuals who meet the established priorities for service as described in OAR chapter 411, division 015 and have been assessed to be in need of a service provided in OAR chapter 411, division 030. Payments for in-home services are not intended to replace the resources available to an individual from their natural support system. Payment by the Department can be considered or authorized only when such resources are not available, not sufficient, or cannot be developed to adequately meet the needs of the individual. An individual whose service needs are met by their natural supports will not be eligible for in-home services. Service plans will be based upon the least costly means of providing adequate care.

(2) Individuals served under the Home and Community-Based Services Waivered In-Home Services Program and the Independent Choices Program must meet the established priorities for service as described in OAR chapter 411, division 015 and must:

(a) Be current recipients of OSIPM;

(b) Reside in a living arrangement in which in-home services may be provided as described in OAR 411-030-0033; and

(c) Be eighteen years of age or older.

(3) To be eligible for the Home and Community-Based Services Waivered In-Home Services Program, an individual must employ an enrolled Homecare Worker or Contracted In-Home Care Agency to provide those services authorized and paid by the Department. Participants of the Independent Choices Program are not limited to the hiring of an enrolled Homecare Worker or Contracted In-Home Care Agency.

(a) Initial eligibility for waived in-home services does not begin until a service plan has been authorized. The service plan must identify the provider who will deliver the authorized services, and must include the date when the provision of services will begin and the maximum number of hours authorized.

(b) If, for any reason, the employment relationship between the individual and provider is discontinued, an enrolled Homecare Worker or Contracted In-Home Care Agency must be employed within 14 business days for the client to remain eligible for the program. Participants of the Independent Choices Program must meet OAR 411-030-0100.

(c) An eligible individual who has been receiving waived in-home services and temporarily enters a nursing facility or medical institution must employ an enrolled Homecare Worker or Contracted In-Home Care Agency within 14 business days of discharge from the facility or institution. Participants of the Independent Choices Program must meet OAR 411-030-0100.

(4) Separate eligibility criteria for in-home services exist for persons eligible for:

(a) Oregon Project Independence as described in OAR chapter 411, division 032;

(b) Independent Choices Program as described in OAR 411-030-0100; or

(c) Spousal Pay Program as described in OAR 411-030-0080.

(5) Residents of licensed community-based care facilities, nursing facilities, prisons, hospitals and other institutions that provide assistance with activities of daily living are not eligible for in-home services.

(6) Individuals with excess income must contribute to the cost of service pursuant to OAR 461-160-0610 and 461-160-0620.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 3-1985, f. & ef. 4-1-85; SSD 4-1993, f. 4-30-93, cert. ef. 6-12-93, Renumbered from 411-030-0001; SPD 2-2003(Temp), f. 1-31-03, cert. ef. 2-1-03 thru 7-30-03; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 1-2006(Temp), f. & cert. ef. 1-13-06 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-030-0050

Case Management

(1) ASSESSMENT.

(a) The assessment process will identify the individual's ability to perform activities of daily living, self-management tasks, and determine the individual's ability to address health and safety concerns. The Case Manager will conduct this assessment in accordance with standards of practices established by SPD in OAR 411-015-0008.

(b) The assessment will be conducted by a Case Manager or other qualified SPD or Area Agency on Aging representative in the home of the eligible individual, no less than annually, with a standardized assessment tool approved by SPD.

(2) CONTRACT RN ASSESSMENT.

(a) Contract RN services are prior authorized by a SPD or Area Agency on Aging Case Manager to provide:

(A) Nursing assessment and reassessment as appropriate;

(B) Medication review;

(C) Assignment of basic care tasks to a Homecare Worker; and

(D) Delegation of special tasks of nursing care to a Homecare Worker.

(b) Indicators of the need for RN assessment and monitoring include:

(A) Full assistance in cognition;

(B) Medical instability;

(C) Potential for skin breakdown or decubitus ulcer;

(D) Multiple health problems or frailty with a strong probability of deterioration; or

(E) Potential for increased self-care, but instruction and support for the individual are needed to reach goals.

(c) Maximum hours for each contracted RN service will be established by SPD.

(3) SERVICE PLAN.

(a) The client and Case Manager, with the assistance of other involved individuals, will consider in-home service options as well as assistive devices, architectural modifications, and other community-based care resources to meet the service needs identified in the assessment process.

(b) The Case Manager has responsibility for determining eligibility for specific services, presenting alternatives to the individual, identifying risks, and assessing the cost effectiveness of the plan. The Case Manager will monitor the plan and make adjustments as needed.

(c) The client, or their representative, has the responsibility to choose and assist in developing less costly service alternatives, including the Client-Employed Provider Program and Contracted In-Home Care Agency services.

(d) The service plan payment will be considered full payment for the services rendered under Title XIX. Under no circumstances is the employee to demand or receive additional payment for these Title XIX-covered services from the client-employer or any other source. Additional payment to Homecare Workers or Independent Choices Program providers for the same services covered by Oregon's Title XIX Home and Community-Based Services Waiver or Spousal Pay Programs is prohibited.

(e) For the Independent Choices Program, the service plan includes the service budget as per OAR 411-030-0100.

(f) SPD will not authorize individuals applying for a hardship shelter allowance associated with employing a live-in provider on or after June 1, 2006.

(g) Individuals eligible for and authorized to receive a hardship shelter allowance before June 1, 2006 may continue to receive a hardship shelter allowance on or after June 1, 2006 at the rate established by SPD if one of the following conditions is met:

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(A) The individual will be forced to move from their current dwelling and the individual's current average monthly rent or mortgage costs exceed current OSIP and OSIPM standards for a one-person need group as outlined in OAR 461-155-0250; or

(B) Service costs would significantly increase as a result of the individual being unable to provide living quarters for a necessary live-in provider.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 5-1983, f. 6-7-83, ef. 7-1-83; SSD 3-1985, f. & ef. 4-1-85; 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 1-1988, f. & cert. ef. 3-1-88; SSD 6-1988, f. & cert. ef. 7-1-88; SSD 9-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 11-1989(Temp), f. & cert. ef. 9-1-89; SSD 18-1989, f. 12-29-89, cert. ef. 1-1-90; SSD 7-1990(Temp), f. & cert. ef. 3-1-90; SSD 16-1990, f. & cert. ef. 8-20-90; SSD 1-1992, f. & cert. ef. 2-21-92; SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93, Renumbered from 411-030-0022; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-030-0070

Maximum Hours of Service

(1) LEVELS OF ASSISTANCE FOR DETERMINING SERVICE PLAN HOURS.

(a) "Minimal Assistance" means the individual is able to perform the majority of an activity, but requires some assistance from another person.

(b) "Substantial Assistance" means the individual can perform only a small portion of the tasks that comprise the activity without assistance from another person.

(c) "Full Assistance" means the individual needs assistance from another person through all phases of the activity, every time the activity is attempted.

(2) MAXIMUM MONTHLY HOURS FOR ACTIVITIES OF DAILY LIVING.

(a) The planning process will use the following limitations for time allotments for ADL tasks. Hours authorized are based on the service needs of the individual. Case Managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial or full).

(A) Eating: Minimal assistance — 5 hours; Substantial assistance — 20 hours; Full assistance — 30 hours;

(B) Dressing/Grooming: Minimal assistance — 5 hours; Substantial assistance — 15 hours; Full assistance — 20 hours;

(C) Bathing and Personal Hygiene: Minimal assistance — 10 hours; Substantial assistance — 15 hours; Full assistance — 25 hours;

(D) Mobility: Minimal assistance — 10 hours; Substantial assistance — 15 hours; Full assistance — 25 hours;

(E) Elimination (Toileting, Bowel and Bladder): Minimal assistance — 10 hours; Substantial assistance — 20 hours; Full assistance — 25 hours;

(F) Cognition/Behavior: Minimal assistance — 5 hours; Substantial assistance — 10 hours; Full assistance — 20 hours.

(b) Service plan hours for activities of daily living may only be authorized for an individual if the individual requires assistance (minimal, substantial or full) from another person in that activity of daily living as determined by a service assessment applying the parameters in OAR 411-015-0006.

(c) For households with two or more eligible individuals, each person's ADL service needs are considered separately. In accordance with section (3)(c) of this rule, authorization of self-management hours will be limited for each additional individual in the home.

(d) Hours authorized for activities of daily living are paid at hourly rates in accordance with the rate schedule. The Independent Choices Program cash payment is based on the hours authorized for ADLs paid at the hourly rates. Participants of the Independent Choices Program may determine their own provider pay rates.

(3) MAXIMUM HOURS FOR SELF MANAGEMENT TASKS.

(a) The planning process will use the following limitations for time allotments for all services. Hours authorized are based on the service needs of the individual. Case Managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial or full).

(A) Medication and Oxygen Management: Minimal assistance — 2 hours; Substantial assistance — 4 hours; Full assistance — 6 hours;

(B) Transportation or Escort Assistance: Minimal assistance — 2 hours; Substantial assistance — 3 hours; Full assistance — 5 hours;

(C) Meal Preparation: Minimal assistance — breakfast — 4 hours, lunch — 4 hours, supper — 8 hours; Substantial assistance — breakfast — 8 hours, lunch — 8 hours, supper — 16 hours; Full assistance — breakfast — 12 hours, lunch — 12 hours, supper — 24 hours;

(D) Shopping: Minimal assistance — 2 hours; Substantial assistance — 4 hours; Full assistance — 6 hours;

(E) Housecleaning: Minimal assistance — 5 hours; Substantial assistance — 10 hours; Full assistance — 20 hours.

(b) Rates will be paid in accordance with the rate schedule. When a live-in employee is present, these hours may be paid at less than minimum wage according to the Fair Labor Standards Act. The Independent Choices Program cash payment is based on the hours authorized for self management tasks paid at the hourly rates. Participants of the Independent Choices Program may determine their own provider pay rates.

(c) When two or more individuals eligible for self-management task hours live in the same household, the assessed self-management need of each individual will be calculated. Payment will be made for the highest of the allotments and a total of four additional self-management hours per month for each additional individual to allow for the specific self-management needs of the other individuals.

(d) Service plan hours for self-management tasks may only be authorized for an individual if the individual requires assistance (minimal, substantial or full) from another person in that self-management task as determined by a service assessment applying the parameters in OAR 411-015-0007.

(4) TWENTY-FOUR HOUR AVAILABILITY.

(a) Payment for twenty-four hour availability will be authorized only when the client employs a live-in Homecare Worker or Independent Choices Program provider and requires this availability due to the following:

(A) The individual requires assistance with activities of daily living or self-management tasks at unpredictable times throughout most 24 hour periods; and

(B) The individual requires minimal, substantial, or full assistance with ambulation and requires assistance with transfer (as defined in OAR 411-015-0006); or

(C) The individual requires full assistance in transfer or elimination (as defined in OAR 411-015-0006); or

(D) The individual requires full assist in at least three of the eight components of cognition/behavior (as defined in OAR 411-015-0006).

(b) The number of hours allowed per month will have the following maximums. Hours authorized are based on the service needs of the individual. Case Managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial or full).

(A) Minimal Assistance — 60 hours. Minimal assistance hours may be authorized when an individual requires one of these assessed needs as defined in OAR 411-015-0006:

(i) Full assist in cognition; or

(ii) Full assist in toileting or bowel or bladder.

(B) Substantial Assistance — 110 hours. Substantial assistance hours may be authorized when an individual requires these assessed needs as defined in OAR 411-015-0006:

(i) Assist in transfer; and

(ii) Assist in ambulation; and

(iii) Full assist in cognition; or

(iv) Full assist in toileting or bowel or bladder.

(C) Full Assistance — 159 hours. Full assistance hours may be authorized when:

(i) The authorized provider cannot get at least five continuous hours of sleep in an eight hour period during a 24-hour work period; and

(ii) The eligible individual requires these assessed needs as defined in OAR 411-015-0006:

(I) Full assist in transfer; and

(II) Assist in mobility; or

(III) Full assist in toileting or bowel or bladder; or

(IV) Full assist in cognition.

(c) Service plans that include full-time live-in Homecare Workers or Independent Choices Program providers will include a minimum of 60 hours per month of twenty-four hour availability. When a live-in Homecare Worker or Independent Choices Program provider is employed less than full time, the hours will be pro-rated. Full-time means the live-in Homecare Worker is providing services to the client-employer seven days per week throughout a calendar month.

(d) Rates for this availability are in accordance with the rate schedule and paid at less than minimum wage according to the Fair Labor Standards Act and ORS 653.020(2).

(e) Twenty-four hour availability assumes the Homecare Worker or Independent Choices Program provider will be available to address the service needs of an individual as they arise throughout a 24 hour period. A

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Homecare Worker or Independent Choices Program provider who engages in employment outside the eligible individual's home or building during the work periods he or she is on duty as a Homecare Worker, is not considered available to meet the service needs of the individual.

(5) Under no circumstances will any provider receive payment from SPD for more than the total amount authorized by SPD on the Service Plan Authorization Form. All service payments must be prior-authorized by SPD or AAA.

(6) **AUTHORIZED HOURS ARE SUBJECT TO THE AVAILABILITY OF FUNDS.** Case Managers must assess and utilize as appropriate, natural supports, cost-effective assistive devices, durable medical equipment, housing accommodations, and alternative service resources (as defined in OAR 411-015-0005) which could reduce the individual's reliance on paid in-home services hours.

(7) It is the intent of SPD to authorize paid in-home services only to the extent necessary to supplement potential or existing resources within the individual's natural support system.

(8) Payment by the Department for waived in-home services can only be made for those tasks described in this rule as activities of daily living, self-management tasks and twenty-four hour availability. Services must be authorized to meet the needs of the eligible individual and cannot be provided to benefit the entire household.

(9) **EXCEPTIONS TO MAXIMUM HOURS OF SERVICE.**

(a) To meet an extraordinary ADL service need that has been documented, the hours authorized for activities of daily living can exceed the full assistance hours (defined in section (2) of this rule) as long as the total number of ADL hours in the service plan does not exceed 145 hours per month.

(b) Monthly service payments that exceed 145 ADL hours per month may be approved by SPD central office when the exceptional payment criteria identified in OAR 411-027-0000 and 411-027-0050 are met.

(c) Monthly service plans that exceed 389 hours per month for a live-in Homecare Worker or Independent Choices Program provider plan, or that exceed the equivalent monthly service payment for an hourly services plan, may be approved by SPD central office when the exceptional payment criteria identified in OAR 411-027-0000 and 411-027-0050 are met.

(d) As long as the total number of self-management task hours in the service plan does not exceed 85 hours per month and the service need is documented, the hours authorized for self-management tasks can exceed the hours for full assistance (as defined in section (3) of this rule) for the following tasks and circumstances:

(A) Housekeeping based on medical need (such as immune deficiency);

(B) Short-term extraordinary housekeeping services necessary to reverse unsanitary conditions that would jeopardize the health of the individual; or

(C) Extraordinary self-management needs in medication management or service-related transportation.

(e) Monthly service plans that exceed 85 hours per month in self-management tasks may be approved by SPD central office when the individual meets the exceptional payment criteria identified in OAR 411-027-0000 and 411-027-0050.

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

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SSD 6-1994, f. & cert. ef. 11-15-94; SDSD 8-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; SDSD 3-2000, f. 4-11-00, cert. ef. 4-12-00; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 15-2004, f. 5-28-04, cert. ef. 6-7-04; SPD 18-2005(Temp), f. 12-20-05, cert. ef. 12-21-05 thru 6-1-06; SPD 20-2006, f. 5-26-06, cert. ef. 6-1-06; SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-030-0100

Independent Choices Program

(1) The Independent Choices Program (ICP) is an In-Home Services Program that empowers participants to self-direct their own service plans and purchase services that will enhance independence, dignity, choice and well-being.

(2) **ELIGIBILITY REQUIREMENTS.**

(a) To be eligible for the ICP an individual must:

(A) Be a current enrollee in the ICP in Clackamas, Jackson, Josephine, Coos or Curry counties;

(B) Meet all program requirements of the In-Home Services Program;

(C) Develop a service plan and budget to meet the needs identified in the CA/PS assessment;

(i) The Case Manager may assist in the development of the service plan and budget.

(ii) The Case Manager is responsible to review the participant's proposed initial service plan and service budget and approve plans and budgets that meet the program guidelines.

(D) Acknowledge his/her understanding of the risks and responsibilities of self direction and agree to the requirements of the ICP as evidenced by signing the "Independent Choices Participation Agreement";

(E) Provide evidence of a stable living situation, which is defined as continuous and ongoing occupancy at a given residence for the past three months. If circumstances beyond the participant's control have prompted a move within the past three months, proof of any three consecutive months of occupancy during the past year is acceptable; and

(F) Manage money and a checking account as evidenced by the submission of monthly receipts for the payment information of household rent or mortgage and utilities or that a payment plan is being followed.

(b) For the purpose of this rule, a "Representative" in the ICP means the person meets the definition of representative in OAR 411-030-0020 and the person is assigned by the participant and approved by the Department of Human Services or Area Agency on Aging local office to act as the participant's decision maker in matters pertaining to the ICP service plan and service budget.

(c) If the participant is unable to direct and purchase his/her own in-home services, the participant must have a representative to act on the participant's behalf. To be a representative, the person must:

(A) Complete a criminal history check pursuant to OAR chapter 407, division 007 and receive a final fitness determination of approval;

(B) Review ICP information on how to effectively assist the participant in managing the participant's service plan and service budget; and

(C) Understand the risks, benefits and responsibilities of representing a participant in the ICP and sign and carry out the provisions of the "Independent Choices Program Representative Agreement".

(d) If the participant is unable to manage ICP cash payment accounting or tax or payroll responsibilities and does not have a person who will accept the role of a representative, the participant must arrange and purchase the ongoing services of a fiscal intermediary, such as an accountant, bookkeeper or equivalent financial services to handle these financial responsibilities.

(e) Participants or their representative who have met these eligibility criteria may also choose to use a fiscal intermediary to manage the ICP financial responsibilities. The participant is responsible for any fees or payment to the fiscal intermediary.

(3) **DISENROLLMENT CRITERIA.**

(a) Participants and representatives may be disenrolled from the ICP voluntarily or involuntarily.

(A) **Voluntary Disenrollment.** Participants must provide notice to SPD of intent to discontinue participation. The participant must meet with SPD to reconcile remaining ICP cash payment either within 30 days of the date of disenrollment or before the termination date, whichever is sooner.

(B) **Involuntary Disenrollment.** When a participant does not adequately meet his/her service needs or carry out the necessary ICP responsibilities, the participant may be involuntarily disenrolled. The participant's involuntary disenrollment may result from any of the following disenrollment criteria:

(i) Failure to employ an employee provider.

(I) If, for any reason, the employment relationship is discontinued, an employee provider must be employed within 14 business days for the participant to remain eligible for the program.

(II) A participant who has been receiving ICP benefits and temporarily enters a nursing facility or medical institution must employ an employee provider within 14 business days of discharge from the facility or institution.

(ii) Non-payment of employee's wages, as defined in the employer's and employee's working agreement.

(iii) Failure to maintain health and well-being by obtaining adequate personal care as evidenced by:

(I) Declines in physical functional status which are not attributable to changes in health status; or

(II) Substantiated complaints of self-neglect or neglect or other abuse on the part of the provider or representative.

(iv) Failure to purchase and direct in-home services and other goods and services according to the service plan or stay within the service budget.

(v) Failure to comply with the legal or financial obligations as an employer of domestic workers.

(vi) Failure to maintain a separate ICP checking account or commingling ICP cash payments with other assets.

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(vii) Inability to manage the cash payment as evidenced by two or more incidents of overdrafts of the participant's ICP checking account during the last cash benefit review period.

(viii) Failure to deposit monthly service liability payment into the ICP checking account.

(ix) Failure to maintain an individualized back up plan as part of the ICP service plan resulting in a negative consequence.

(C) Participants who are involuntarily disenrolled from the ICP may not re-apply for ICP for six months. After the disenrollment period, an individual may request ICP again but must meet all eligibility requirements at the time of the new request.

(D) Participants who are involuntarily disenrolled must be reviewed for eligibility for other Medicaid In-home or community based services options and offered other alternatives if eligible.

(4) **INTERRUPTION OF SERVICES.** When a participant is absent from the home for longer than 30 days due to illness or medical treatment, the ICP cash payment will be terminated. Cash payments may resume upon return to the home, providing ICP eligibility criteria is met.

(5) SELECTION OF EMPLOYEE PROVIDERS.

(a) The participant carries full responsibility for locating, screening, interviewing, hiring, training, paying, and terminating his/her own employees. The participant must comply with Immigration and Naturalization Service laws and policies.

(b) Participants and representatives are responsible for assuring their employee's ability to perform or assist with activities of daily living (ADL), instrumental activities of daily living (IADL) and twenty-four hour availability needs.

(c) Employee providers must submit the DHS 301 criminal history check form to the Department. If a record of a potentially disqualifying crime is revealed, the participant may employ the provider at the participant's discretion.

(d) A representative cannot be a paid employee provider regardless of relationship to the participant.

(6) CASH PAYMENTS AND SERVICE BUDGET.

(a) The cash payment, which is allocated to the ICP participant, is based on the CA/PS assessment of need, the service plan and the level of assistance standards in OAR 411-030-0070 in accordance with the rate schedule. This cash payment is identified in the service budget.

(b) The maximum allowable employee provider wage rate in the ICP service budget for activities of daily living is the local Contracted In-Home Care Agency rate for personal care in accordance with the rate schedule.

(c) The maximum allowable employee provider wage rate in the ICP service budget for self management tasks is the local Contracted In-Home Care Agency rate for home care in accordance with the rate schedule.

(d) The cash payment, which is prospectively paid by the Department, will include the employer's portion of required FICA, FUTA, and SUTA. This payment will be directly deposited into the participant's ICP designated checking account.

(e) The service budget identifies the amount of funds under the control of a participant to be utilized for services and supports. The budget must identify the reimbursement to an employee provider and all other expenditures.

(f) The following services, which are approved by the Case Manager and paid by the Department, are excluded from ICP cash payments:

- (A) Contract RN assessment and services;
- (B) Contracted non medical waiver service transportation;
- (C) Home delivered meals; and
- (D) Emergency response systems.

(g) The participant may amend the service budget as long as the amendments relate to meeting the service needs, or contingency or discretionary funds, and are within the ICP program guidelines. Service budget amendments will be reviewed by the Case Manager during the next service budget review.

(h) Within the ICP service plan, the participant may set up a contingency fund if approved by the Case Manager to purchase identified items that would substitute for personal assistance, such as a microwave oven and to allow for greater independence, such as an accessibility ramp. This fund, which is identified in the service budget, can be carried over into the next month's budget until the item is purchased.

(i) Within the ICP service plan, the participant may create a monthly discretionary fund to purchase items not otherwise delineated in their monthly service budget or earmarked for savings for items not traditionally covered under waived services, such as prescription co-pays or transportation. Within this discretionary fund the participant is allowed to spend

up to 10 percent of the monthly amount authorized on the "Independent Choices Benefit Calculation" (form 5461C).

(j) Participant's relatives may be employed as employee providers, except as per section (5)(d) of this rule. However, payments for in-home services are not intended to replace the resources available to a participant from their natural support system.

(k) When the spouse is the employee provider and the assessed needs indicate twenty-four hour availability, the cash payment to the ICP participant will consist of the cash value of one-half of the assessed hours for twenty-four hour availability, one-half of the assessed hours for self-management tasks, plus all of the hours for specific activities of daily living paid at the live-in Homecare Worker rates, based on the assessed service needs of the participant.

(l) When the spouse is the employee provider and there are no assessed needs indicating twenty-four hour availability, the cash payment to the ICP participant will consist of the cash value of the hours for assessed activities of daily living paid at the hourly Homecare Worker rates.

(m) At least every six months, SPD will complete a service budget review to assure financial accountability according to these rules.

(7) ISSUING BENEFITS.

(a) The service plan and budget must be prior approved by the Case Manager before the first ICP cash payment is made.

(b) A cash payment is considered issued and received by the participant when the direct check deposit is made to the participant's ICP bank account or a benefit check is received by the participant.

(c) Benefits are exempt from income and resource calculations for other Department programs only while in the ICP bank account and not commingled with other personal funds.

(d) Cash payments are not subject to assignment, transfer, garnishment, or levy as long as they can be identified as program payments and are separate from other money in the participant's possession.

(8) **HEARING RIGHTS.** ICP participants have contested case hearing rights as described in OAR chapter 461, division 025.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-036-0000

Purpose

(1) These Administrative Rules are established to ensure that Independent Choices Program services will maximize independence, empowerment, dignity, and human potential through provision of flexible, efficient, and suitable services to each eligible consumer.

(2) Services enabled by these rules are intended to complement and supplement the consumer's own personal abilities to continue to live in his/her own home.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 6-2000, f. 12-29-00 cert. ef. 1-1-01; SDSL 10-2002, f. & cert. ef. 11-1-02; Suspended by SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-036-0010

Definitions

For the purpose of these rules, definitions used in OAR 411-030-0020 apply, as do the following:

(1) "AAA" means an Area Agency on Aging (AAA) which is an established public agency within a planning and service area designated under Section 305 of the Older American's Act and has responsibility for local administration of Department programs.

(2) "Case manager" refers to Department or AAA local office staff who complete functional assessments of ICP consumers, establish consumer eligibility for ICP, contact consumers at six month intervals, and monitor consumer progress and need for assistance.

(3) "Client Assessment and Planning System" (CAPS) means the process of identifying the functional impairment levels including the person's dependency, need for assistance, and independence in performing activities of daily living, by using the Department's currently designated tool or an approved supplement.

(4) "Consumer" means an individual eligible for Independent Choices Program services who is either a recipient of in-home services or is eligible for in-home services under Oregon law. (A consumer who lives in a community-based care facility is not eligible for ICP project participation.)

(5) "Contingency fund" means any ICP funds accumulated in the consumer's ICP bank account that are held for contingency expenses.

(6) "Evaluation or Research Activities" are those activities which will allow the initial study group to be evaluated. Such activities include, but

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may not be limited to, survey instruments and questionnaires completed by each member of the study group.

(7) "FICA" is the acronym for Federal Insurance Contribution Act.

(8) "FUTA" is the acronym for Federal Unemployment Tax Assessment.

(9) "Independent Choices Program" (ICP) refers to the program wherein the provider is directly employed by the consumer and provides either hourly or live-in services.

(10) "Employee Provider" means an individual retained by the consumer to render service to that consumer for a fee.

(11) "Study group" means the group of participants in Independent Choices who will be a part of the initial testing of consumer-directed long-term care for its suitability to become a permanent part of Oregon's community-based care programs. This group will consist of participants in the Independent Choices demonstration project and a non-participating control group of eligible consumers with similar characteristics.

(12) "Surrogate decision-maker" means the person assigned by the consumer and approved by the Department or AAA local office to act as the consumer's decision maker and representative in matters pertaining to Independent Choices Program service payments.

(13) "SUTA" is the acronym for State Unemployment Tax Assessment.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 6-2000, f. 12-29-00 cert. ef. 1-1-01; SDSL 10-2002, f. & cert. ef. 11-1-02; Suspended by SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-036-0020

Program Scope

(1) The Independent Choices Program is a demonstration project designed to allow for a long-term care option that empowers consumers to self-direct their own service plans and purchase services that will enhance their independence, dignity, choice and well-being in his/her own home. The services purchased can range from assistance with general household tasks to assistance with activities of daily living. The extent of the services may vary from a few hours per week to full-time and may be provided in the home or in the community.

(2) The demonstration will involve three partner sites, those being Clackamas County Social Services, Rogue Valley Council of Governments and Coos-Curry-Coquille local offices with enrollment caps at each site of no more than one hundred consumers.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 6-2000, f. 12-29-00 cert. ef. 1-1-01; SDSL 10-2002, f. & cert. ef. 11-1-02; Suspended by SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-036-0030

Eligibility Requirements

The purpose of establishing eligibility requirements for persons to be served in the Independent Choices Program (ICP) is to assist the Department in addressing the following goals:

(1) Testing whether direct payment of a cash benefit for in-home services increases consumer satisfaction, independence and service options without decreasing health status and personal well-being, allowing persons eligible for and receiving long-term care services to remain in the least restrictive and least costly setting consistent with their care needs;

(2) Identifying consumer groups who are most likely to be successful in a self-directed program that makes cash benefits available to its participants;

(3) Assuring access to ICP services for appropriate eligible persons;

(4) Assuring that ICP services, and the setting in which they are provided, are safe and adequate; and

(5) Managing limited resources to enable the greatest possible number of eligible and appropriate persons receive needed ICP services based on the Department's assessment of the consumer's recognized capabilities, demonstrated abilities, functional impairment, and alternative service systems available.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 6-2000, f. 12-29-00 cert. ef. 1-1-01; SDSL 10-2002, f. & cert. ef. 11-1-02; Suspended by SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-036-0040

Enrollment

(1) Independent Choices Program services may be considered for those individuals who meet the established eligibility criteria and priority for service as described in OAR 411-015-0100 and 461-135-0760.

(2) Project participants must demonstrate and have recognized capability to appropriately direct and purchase his/her own in-home care, or if the consumer is unable to do so, must have a family member, legal representative or other representative designated as surrogate who is willing and able to arrange and purchase supports on the consumer's behalf and to sign the Independent Choices Participation Agreement. Consumers must demonstrate the ability to assess and plan for care as follows:

(a) By maintaining a stable living situation, defined as continuous tenancy at a given residence for the past three months. If health issues or a no-fault situation has prompted a move within the past three months, proof of any three consecutive months of tenancy during the past year is acceptable.

(b) By managing money so that food, shelter, utilities and personal care needs are met. Ability to manage money may be shown by submission of a current bill from an electricity, gas or water department showing that payments are current or a payment plan is being followed, and by submission of documentation that demonstrates recent timely rent/mortgage payments.

(3) Prior to receiving an Independent Choices benefit, all participants or their designated surrogate will be required to attend a training session covering the legal and financial responsibilities of being an employer.

(4) All participants or their designated surrogate must pass an exam testing their knowledge of the financial responsibilities of being an employer if it is their choice to manage the cash benefit without use of a fiscal intermediary. To receive a passing grade, the consumer or their surrogate must correctly answer 50 percent (50%) of the questions.

(a) Participants or their designated surrogate unable to pass the exam will be required to use a fiscal intermediary to participate in the program. When the participant is required to use a fiscal intermediary, the Department is responsible for payment to the fiscal intermediary for services provided to the participant.

(b) Participants or their designated surrogate who have passed the exam may also choose to use a fiscal intermediary. If the participant is not required by the Department to use a fiscal intermediary, the participant is responsible for payment to the fiscal intermediary for services provided to the participant.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 6-2000, f. 12-29-00 cert. ef. 1-1-01; SDSL 10-2002, f. & cert. ef. 11-1-02; Suspended by SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-036-0045

Wait List

(1) The Independent Choices program is limited to 300 participants in three demonstration areas. Each demonstration area is allotted 100 participant slots. When capacity is reached in any of the demonstration areas, participants requesting enrollment will go on a waiting list until a slot becomes available.

(2) In cases where Independent Choices benefits are terminated due to absence from the home due to illness or medical treatment for longer than 30 consecutive days and there are no available slots in the demonstration area, the participant's name will go to the top of the wait list.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 10-2002, f. & cert. ef. 11-1-02; Suspended by SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-036-0050

Disenrollment and Disenrollment Criteria

(1) Participants and surrogates may be disenrolled from the ICP project voluntarily or involuntarily:

(a) Voluntary disenrollment: Participants must provide thirty (30) days notice to the local office of intent to discontinue project participation.

(b) Involuntary disenrollment: When a participant proves to be unable to self-direct purchase and payment of long-term care, when a surrogate proves incapable of acting in the best interest of the participant, or when persons invalidate the terms of their Participation Agreement, they may be involuntarily terminated from the ICP project and reinstated into another long-term care option of their choice.

(c) Involuntary disenrollment may result from any of the following disenrollment criteria:

(A) A provider claim of non-payment of wages where the consumer or his/her representative cannot show proof of payment;

(B) Evidence that the Medicaid cash benefit was used for illegal purposes in accordance with local, state or federal statutes;

(C) Failure to comply with legal/financial obligations as an employer of domestic workers and/or unwillingness to participate in counseling and training to remedy lack of compliance;

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(D) Inability to manage the cash benefit as evidenced by:
(i) Overdrafts of the consumer's Independent Choices bank account;
(ii) Non-compliance with recommendations for training/use of community resources which were the result of (1)(c)(A) of this rule.

(E) Failure to maintain health and well-being by obtaining adequate personal care as evidenced by:

(i) Declines in physical functional status which are not attributable to changes in health status;

(ii) Substantiated complaints of the consumer's self-neglect, neglect, or other abuse on the part of the consumer or surrogate.

(F) Refusal to cooperate with demonstration evaluation activities, even when local staff have made efforts to accommodate the consumer's personal needs relating to participation.

(2) Loss of eligibility. Persons will no longer be eligible for project participation and will be disenrolled from the ICP program when:

(a) A participant moves from their own home to a substitute home such as an assisted living facility, an adult foster home, a residential care facility or into a nursing home; or

(b) A participant loses their Medicaid financial eligibility.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 6-2000, f. 12-29-00 cert. ef. 1-1-01; SDSL 10-2002, f. & cert. ef. 11-1-02; Suspended by SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-036-0060

Case Management

Functional Assessment:

(1) Both project participants and control group participants will be assessed at project implementation and semi-annually thereafter.

(2) The assessment process will identify the consumer's ability to perform activities of daily living, self-management tasks, and determine the consumer's ability to address health and safety concerns. The case manager will conduct this assessment in accordance with standards of practice established by the Department as described in OAR 411, division 030.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 6-2000, f. 12-29-00 cert. ef. 1-1-01; SDSL 10-2002, f. & cert. ef. 11-1-02; Suspended by SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-036-0070

Service Rate Allocation

(1) Setting the monthly allocation:

(a) Payments for Independent Choices are not intended to replace the resources available to a client from their natural support system of relatives, friends, and neighbors. Only to the extent that such resources are not available, not sufficient, or cannot be developed to adequately meet the needs of the client can payment by the Department be considered or authorized.

(b) All participating consumers will have a functional assessment completed by local case management staff using the CAPS tool. The CAPS tool will be completed at consumer's entry into the Independent Choices Program, and at six-month intervals after entry.

(c) The cash benefit allocation will be based upon assessment of need determined by the CAPS tool and upon the assistance standards in OAR 411, division 030, the Client-Employed Provider (CEP) Program.

(d) The cash benefit allocation will be increased by the employer portion of required FICA, FUTA and SUTA contributions that the Department pays on behalf of consumers participating in the CEP program.

(e) The cash benefit allocation will be reviewed and reassessed by the Case Manager every six months, or as needed, if the consumer's condition changes.

(f) Independent Choices Program allocations will be increased the same percentage as that used in the CEP program, but not to exceed the trend rate determined by the Centers for Medicare and Medicaid Services.

(2) Employment Relationship: The relationship between the provider and the consumer is that of employee and employer.

(3) Interruption of Services:

(a) When a consumer is absent from the home due to an illness or medical treatment, and is expected to return to the home, cash benefits may be retained to ensure the provider's presence upon the consumer's return, or to maintain the consumer's home for up to 30 days.

(b) When a consumer is absent from the home due to illness or medical treatment for longer than 30 days, ICP benefits will be terminated, but can resume upon return to the home, providing eligibility criteria can still be met, and if the program's enrollment cap has not been met in the interim.

(4) Selection of Employee Providers:

(a) The consumer carries full responsibility for locating, interviewing, screening, and hiring his/her own employees. The right to employ the individual of his/her choice stands without regard to any limitations established by the legislature or federal government, except for Immigration and Naturalization Service Rules.

(b) Provider Monitoring: Consumers and surrogates are responsible for assuring their employees' ability to perform or assist with any activity of daily living (ADL) need and his or her competency to provide or assist with instrumental ADL needs. Case management staff will assist the client in assessing provider abilities if requested.

(c) Screening and Criminal Record Checks: Providers must be subjected to a criminal record check with costs borne by the Department. If a record of a potentially disqualifying crime is revealed, the consumer may allow the applicant to function as a provider solely at his or her discretion.

(d) Relatives as Providers: Participants' relatives may be employed as providers; however, payments for home services are not intended to replace the resources available to a consumer from their natural support system.

(e) Spousal Providers: Spouses of the consumer may be employed as providers.

(f) Surrogate Decision-Makers cannot be the paid provider regardless of relationship to consumers.

(5) Termination of Employment: Terms of dismissal and resignation are the sole responsibility of the employer to establish. The employer will outline these terms for the provider at the time of employment.

(6) Termination of Cash Payments:

(a) Department or AAA local offices reserve the right to suspend or terminate program participation with timely notice when:

(A) Any disenrollment criteria occur;

(B) Consumer no longer has the skills to adequately or safely obtain and direct needed services; or

(C) The consumer requests termination.

(b) If program participation is terminated by a Department or AAA local office, the consumer has the right to request a hearing for appeal as specified in OAR 461-025-0300-461-025-0385.

(7) Department Fiscal and Accounting Responsibility:

(a) The Department will make an electronic deposit payment to the designated Independent Choices bank account, as authorized by the Department or AAA local office. The deposit will be made by the fifth day of each month in the amount determined as the consumer's cash benefit allocation. This payment shall be considered full payment for the services rendered under Title XIX and the employer's share of payroll taxes, in lieu of client employed provider payments.

(b) Ancillary Contributions: The consumer will retain and pay the employer's share of FICA, and withhold the employee's share of FICA. The prevailing employee's FICA rate must be withheld from his/her payment to each employed service provider. The consumer will also retain and pay the FUTA and SUTA which was part of the cash benefit if these taxes are owed to federal and state agencies at the end of the tax year.

(c) All provider payments and contingency fund payments must be paid through the Independent Choices checking account. Bank statements and transaction records will be made available by the consumer to local office staff at any time the account is overdrawn, or on demand. Consumers who become overdrawn must clear all overdraft charges and outstanding check amounts and may be required to schedule time with a local partner for one-on-one technical assistance.

(d) The Department's Finance and Policy Analysis Unit staff will randomly sample representative ICP bank account records, including copies of cancelled checks, on a monthly basis to ensure compliance with the terms and conditions of the project. Surrogates will forward monthly ICP bank statements to the Audit Unit for review.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070

Hist.: SDSL 6-2000, f. 12-29-00 cert. ef. 1-1-01; SDSL 10-2002, f. & cert. ef. 11-1-02; Suspended by SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-036-0080

Issuing Benefits

(1) Under Oregon law, cash benefits are not subject to assignment, transfer, garnishment, levy, or execution, as long as they can be identified as program payments and are separate from other money in the consumer's possession.

(2) A benefit payment accrues to and becomes vested in the consumer when issued.

(3) A benefit is considered issued and received by the consumer when the direct check deposit is made to the consumer's ICP bank account or benefit check is received by the consumer.

ADMINISTRATIVE RULES

(4) Benefits to the consumer do not require accountability for individual expenditures or amounts but they are subject to random audit.

(5) Benefits are exempt from income and resource calculations for other Department programs only while in the Independent Choices bank account and not commingled with other personal funds.

Stat. Auth.: ORS 410.090
Stats. Implemented: ORS 410.070
Hist.: SDSD 6-2000, f. 12-29-00 cert. ef. 1-1-01; SDSD 10-2002, f. & cert. ef. 11-1-02;
Suspended by SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-036-0090

Responsibility for Authorizing Benefits

Department or AAA local offices designated to determine eligibility in specific areas and programs have the sole responsibility to authorize benefits. The local office staff is responsible for determining need, establishing eligibility and authorizing benefits.

Stat. Auth.: ORS 410.090
Stats. Implemented: ORS 410.070
Hist.: SDSD 6-2000, f. 12-29-00 cert. ef. 1-1-01; SDSD 10-2002, f. & cert. ef. 11-1-02;
Suspended by SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-036-0100

Surrogate Decision Makers

(1) With Department or AAA local office staff approval, a surrogate decision-maker may be used to obtain and use benefits for the consumer.

(2) A surrogate decision-maker may be used any time the consumer or another responsible designee names one, who has been approved by the Department or AAA local office in writing, on a form designated by the Department.

(3) When a surrogate decision-maker is named, the surrogate must open the Independent Choices bank account in both the surrogate's and the client's name.

(4)(a) Surrogate decision-makers other than immediate family members of the consumer will be required to submit to a criminal record check.

(b) If the surrogate is found to have a record of a conviction, the Department or AAA local office staff may determine whether circumstances exist that allow the individual to function as a surrogate without endangering the consumer.

Stat. Auth.: ORS 410.090
Stats. Implemented: ORS 410.070
Hist.: SDSD 6-2000, f. 12-29-00 cert. ef. 1-1-01; SDSD 10-2002, f. & cert. ef. 11-1-02;
Suspended by SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-036-0110

Issuance Date of Benefit

For all benefits:

(1) Authorized direct deposit payment of ICP benefits is made between the first and fifth days of the payment period.

(2) Benefits issued by electronic direct deposit will be available by the fifth day of each month except for the initial month of benefits for new, reopened or restored cases.

Stat. Auth.: ORS 410.090
Stats. Implemented: ORS 410.070
Hist.: SDSD 6-2000, f. 12-29-00 cert. ef. 1-1-01; Suspended by SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-036-0120

Hearings and Appeals

(1) For the purpose of these rules, OAR 461-025-0300–461-025-0385 apply to Department of Human Services contested case hearings involving benefits in public assistance programs.

(2) Subject to approval by the Attorney General, Department and AAA local office staff are authorized to appear on behalf of the agency in hearings conducted by the Department.

Stat. Auth.: ORS 410.090
Stats. Implemented: ORS 410.070
Hist.: SDSD 6-2000, f. 12-29-00 cert. ef. 1-1-01; SDSD 10-2002, f. & cert. ef. 11-1-02;
Suspended by SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-036-0130

Termination of Program

This demonstration is meant to be a five-year project and may terminate after the five years have lapsed.

Stat. Auth.: ORS 410.090
Stats. Implemented: ORS 410.070
Hist.: SDSD 6-2000, f. 12-29-00 cert. ef. 1-1-01; SDSD 10-2002, f. & cert. ef. 11-1-02;
Suspended by SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

411-036-0140

Effective Date

The effective date of this demonstration is November 1, 2001.

Stat. Auth.: ORS 410.090

Stats. Implemented: ORS 410.070
Hist.: SDSD 6-2000, f. 12-29-00 cert. ef. 1-1-01; SDSD 10-2002, f. & cert. ef. 11-1-02;
Suspended by SPD 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-24-08

Rule Caption: Medically Involved Children's Program.

Adm. Order No.: SPD 5-2008(Temp)

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 4-15-08 thru 10-12-08

Notice Publication Date:

Rules Adopted: 411-355-0000, 411-355-0010, 411-355-0020, 411-355-0030, 411-355-0040, 411-355-0050, 411-355-0060, 411-355-0070, 411-355-0080, 411-355-0090, 411-355-0100, 411-355-0110, 411-355-0120

Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily adopting rules in OAR chapter 411, division 355 to implement the Medically Involved Children's Program.

The Medically Involved Children's Program is a new, legislatively mandated, in-home support program for children with medical and physical care needs who would otherwise qualify for service in a nursing facility.

The Medically Involved Children's Program is provided by Children's Intensive In-Home Services through the federal Medically Involved Children's Waiver that allows Medicaid eligibility to a maximum of 200 Oregon children who meet the criteria and who live and receive services in their family home.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-355-0000

Purpose

These rules establish the policy of and prescribe the standards and procedures for the provision of Medically Involved Children's Program services for children enrolled by the Seniors and People with Disabilities Division, Children's Intensive In-Home Services. Services provided under this waiver are exclusively intended to allow children who meet the nursing facility level of care to return to their home or remain home with specialized supports and services. Services specifically preserve parent capacity to care for their child, assure the health and safety of the child within the family home, and permit children who have been separated from their families due to their health and medical care needs to return home or prevent out of home placement. These services complement and supplement the services that are available to participants through the Medicaid State Plan and other federal, state and local programs as well as the natural supports that families and communities provide.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 430.215, 427.007, 417.340 - 417.355
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

411-355-0010

Definitions

(1) "Activities of Daily Living (ADL)" means activities usually performed in the course of a normal day in a child's life such as eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition and behavior (play and social development).

(2) "Aide" means a caregiver who is hired by the parent or a billing provider to provide in-home daily care.

(3) "Assistant Director" means the Assistant Director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(4) "Behavior Consultant" means a contractor with specialized skills who:

(a) Assesses the child, the needs of the parent, and the environment in terms of the behavioral support and related issues;

(b) Develops a Behavior Support Plan;

(c) Trains parents and providers; and

(d) Monitors and revises the Behavior Support Plan as needed.

(5) "Billing Provider" means an organization that:

(a) Enrolls and contracts with the Seniors and People with Disabilities Division to provide services through its employees; and

(b) Bills the Seniors and People with Disabilities Division for the provider's services.

(6) "Child" means a person who is under the age of 18 and eligible for Medically Involved Children's Program services.

ADMINISTRATIVE RULES

(7) "Children's Intensive In-Home Services (CIIS)" means the unit within the Seniors and People with Disabilities Division that enrolls eligible children in the Medically Involved Children's Program.

(8) "CIIS Service Coordinator" means an employee of the Seniors and People with Disabilities Division, Children's Intensive In-Home Services, who ensures a child's eligibility for the Medically Involved Children's Program and provides assessment, case planning, service implementation, and evaluation of the effectiveness of the services.

(9) "Citizenship" means the child has United States citizenship as defined by Oregon and federal policies.

(10) "CMS" means Centers for Medicare and Medicaid Services, the federal agency charged with delivery and oversight of all Medicare and Medicaid services.

(11) "Cost Effective" means that in the opinion of the Children's Intensive In-Home Services Service Coordinator a specific service meets the child's service needs and costs less than or is comparable to other service options considered.

(12) "Delegation" means that a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation by a registered nurse shall only occur to the extent allowed by the Oregon Board of Nursing administrative rules.

(13) "Department" means the Department of Human Services.

(14) "Developmental Disability (DD)" is always provisional and means:

(a) For children five years and younger.

(A) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; AND

(B) There is a standardized test demonstrating significant adaptive behavior impairment (more than two standard deviations below the norm) in at least two of the following areas of functioning:

- (i) Self care;
- (ii) Receptive and expressive language;
- (iii) Learning;
- (iv) Mobility; and
- (v) Self-direction; OR

(C) There is a statement by a licensed medical practitioner that the child has a condition or syndrome that will likely cause significant adaptive impairment in at least two of the areas listed in section (13)(a)(B) of this rule.

(b) For children six years and older.

(A) There is a diagnosis of mental retardation; OR

(B) There is a diagnosis of developmental disability; AND

(C) There is significant adaptive behavior impairment (more than two standard deviations below the norm) that requires training or supports similar to that required by individuals with mental retardation in at least two of the following areas of functioning:

- (i) Self care;
- (ii) Receptive and expressive language;
- (iii) Learning;
- (iv) Mobility; and
- (v) Self direction; AND

(D) The condition or impairment must be expected to last indefinitely and must not be otherwise primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; AND

(E) The individual is expected to need multiple, specialized supports indefinitely.

(15) "Eligible Range" means that the score on the Medically Involved Criteria (Form DHS-0521) is at or above 100.

(16) "Family Home" means the residence of the child that is not a foster home, group home or other residential service funded with public funds.

(17) "In-Home Daily Care (IHDC)" means essential supportive daily care delivered by a qualified provider that enables a child to remain or return to the child's family's home.

(18) "Medically Involved" means children who have a health impairment that requires long term, intensive, specialized services on a daily basis that have been accepted for Medically Involved Children's Program services by Children's Intensive In-Home Services.

(19) "Medically Involved Criteria" means the assessment tool (Form DHS-0521) used by Children's Intensive In-Home Services to evaluate the intensity of the challenges presented by children.

(20) "Medically Involved Children's Program (MICP)" means the waiver program granted by the federal Centers for Medicare and Medicaid

Services that allows Title XIX funds to be spent on children living in their family home who otherwise would have to be served in a nursing facility if the waiver program was not available.

(21) "Nurse" means a person who holds a valid, current license from the Oregon Board of Nursing as a registered nurse (RN) or licensed practical nurse (LPN).

(22) "Nursing Care Plan" means a plan of care developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of the child and how those needs will be met. The Nursing Care Plan includes which tasks will be taught, assigned or delegated to the qualified provider or parent. When one exists, it becomes a part of the Plan of Care.

(23) "Nursing Facility (NF)" means a residential medical facility.

(24) "Nursing Tasks or Services" means the care or services that require the education and training of a licensed professional nurse to perform. Some may be delegated.

(25) "OHP" means the Oregon Health Plan.

(26) "Parent" means biological parent, adoptive parent or legal guardian.

(27) "Plan of Care (PoC)" means a written document developed by the Children's Intensive In-Home Services Service Coordinator and the child's parent that describes the needs of the child, the needs and resources of the family that impact the child, and how those needs will be met with family and public resources. The Plan of Care includes the Nursing Care Plan when one exists.

(28) "Primary Caregiver" means the parent, relative or other non-paid parental figure that provides the direct care of the child at the times that a provider is not present.

(29) "Provider or Performing Provider" means the individual who is qualified to receive payment from the Seniors and People with Disabilities Division for in-home daily care that meets the requirements of OAR 411-355-0050. Providers work directly with children. Providers may be employees of billing providers, employees of the parent or independent contractors.

(30) "Respite" means short-term care provided on a periodic basis for the relief of, or due to the temporary absence of, the primary caregiver.

(31) "Seniors and People with Disabilities Division (SPD)" means the Division within the Department of Human Services that focuses on the planning of services, policy development and regulation of programs for persons that have developmental disabilities, are elderly or have physical disabilities.

(32) "Specialized Diet" means specially prepared food and or particular types of food needed to sustain the child in the family home. A specialized diet must be ordered by a physician and periodically monitored by a dietician. It is in addition to meals a parent would provide.

(33) "Supplant" means take the place of.

(34) "These Rules" means the rules in OAR chapter 411, division 355.

(35) "Voucher" means the document generated by CIIS that acts as a prior authorization, contract and payment mechanism for services.

Stat. Auth.: ORS 409.050 & 417.345

Stats. Implemented: ORS 430.215, 427.007, 417.340 - 417.355

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

411-355-0020

Eligibility

(1) ELIGIBILITY. In order to be eligible for the MICP, the child must:

- (a) Be under the age of 18;
- (b) Require nursing facility level of care;
- (c) Be accepted by scoring 100 or greater on the Medically Involved Criteria within four months of starting services;
- (d) Be eligible to receive Title XIX (Medicaid) services;
- (e) Require services offered under the MICP;
- (f) Be a U.S. Citizen;
- (g) Reside in the family home or reside in a nursing facility and wish to return home; and
- (h) Be capable of being safely served in the family home. This includes, but is not limited to, parents demonstrating the willingness, skills and ability to participate in the care as outlined in the Plan of Care in a cost effective manner as determined by the CIIS Service Coordinator within the limitations of OAR 411-355-0040.

(2) INELIGIBILITY.

(a) A child who continues to reside in a hospital, school, sub-acute facility, nursing facility, intermediate care facility for the mentally retarded (ICF/MR), residential facility, foster home or other institution is not eligible for the MICP.

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(b) A child who does not require waiver services or that has sufficient family, government and community resources available to provide for the child's care is not eligible for the MICP.

(c) A child not safely served in the family home as described in section (1)(h) of this rule is not eligible for the MICP.

(3) DISENROLLMENT.

(a) A child will be disenrolled from the MICP if the child no longer meets the Medically Involved Criteria of section (1) of this rule.

(b) A child will be disenrolled if the Medically Involved Criteria score falls below 80.

(4) REDETERMINATION. Eligibility for the MICP will be redetermined using the Medically Involved Criteria at a minimum of every 12 months, or as the child's status changes.

(5) ENROLLMENT.

(a) The date the initial application is complete is the date that CIIS receives all of the required demographic and referral information on the child.

(b) If a child meets the criteria of section (1) of this rule and space is available in the MICP, the child's priority for enrollment will be in accordance with ORS 417.345, CMS model waiver requirements and geographical distribution for equal access to services.

(6) WAIT LIST. A child eligible for the MICP may be placed on a wait list if the allowable numbers of children in the MICP are already being served.

(a) The date the initial application for the MICP is completed shall determine the order on the wait list. A child previously enrolled in CIIS that currently meets eligibility criteria and applies for the MICP will be put on the wait list as of the date their original application for services was complete.

(b) Children on the wait list will be served on a first come, first served basis according to the legislatively mandated enrollment priorities, per geographical region, and as space on the MICP allows.

(7) ASSESSMENT. Anyone can request an assessment for a child for MICP services.

Stat. Auth.: ORS 409.050 & 417.345

Stats. Implemented: ORS 430.215, 427.007, 417.340 - 417.355

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

411-355-0030

Plan of Care

(1) The CIIS Service Coordinator will be responsible for the following activities in the development of the Plan of Care:

(a) The CIIS Service Coordinator will assess the individual service needs of the child through interviews with the parents, caregivers and other interested persons. The assessment will include:

(A) Identification of the current care needs of the child including ADL care, medication management, communication, supervisory needs and physical environment;

(B) Identification of services for which the child is currently eligible;

(C) Identification of services currently being provided;

(D) All available family, government, community resources or private health insurance that meet any or all of the child's needs; and

(E) Identification of areas of unmet needs.

(b) The CIIS Service Coordinator will prepare, with the input of the parent and any other person at the parent's request, a written Plan of Care that:

(A) Defines the needs of the child and the family;

(B) Identifies the methods, resources and strategies that address some or all of those needs;

(C) Identifies the number of hours of in-home daily care or other related services authorized for the child; and

(D) Identifies other services authorized by CIIS for the child.

(2) The Plan of Care will:

(a) Note the maximum hours of authorized provider services; and

(b) Estimate the cost of the care.

(3) The Nursing Care Plan, when one exists, will be included in the Plan of Care.

(4) All behavior and specialized consultant services purchased through the MICP will be included in the Plan of Care.

(5) The Plan of Care will be reviewed with the parent prior to implementation, signed by both the parent and the CIIS Service Coordinator and a copy provided to the parent.

(6) The Plan of Care will include the date of the next planned review. The Plan of Care review will be completed within 365 days of the last Plan of Care.

(7) Significant changes in the needs of the child will be reflected in the Plan of Care as they occur and a copy provided to the parent.

Stat. Auth.: ORS 409.050 & 417.345

Stats. Implemented: ORS 430.215, 427.007, 417.340 - 417.355

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

411-355-0040

Scope and Limitations of Services

(1) In order to be authorized and eligible for payment, all MICP supports and services authorized by CIIS must be:

(a) Directly related to the child's disability;

(b) Required to maintain the health and safety of the child;

(c) Cost effective;

(d) Considered not typical for a parent to provide a child of the same age;

(e) Required to help the parent to continue to meet the needs of caring for the child; and

(f) Included in an approved Plan of Care.

(2) MICP services may include a combination of the following waiver and non-waiver services based upon the needs of the child as determined by the CIIS Service Coordinator and as consistent with the child's Plan of Care:

(a) In-home daily care;

(b) Respite;

(c) Specialized medical equipment and supplies;

(d) Motor vehicle adaptations;

(e) Environmental accessibility adaptations;

(f) Homemaker and chore;

(g) Physical, occupational, and speech and language therapy;

(h) Non-medical transportation;

(i) Family training;

(j) Translation;

(k) Special diets; and

(l) Specialized consultation (behavior and nursing delegation).

(3) The annual average monthly payment, as authorized in the MICP Plan of Care, dated from the initial Plan of Care to the anniversary date, must not exceed the allowed maximum amount of \$3,000 per month.

(4) Ninety-day exceptions to the cost limitations in section (3) of this rule will only be authorized with CIIS Supervisor approval in the following circumstances:

(a) The child is at immediate risk of loss of home without the expenditure.

(b) The expenditure provides supports for emerging or changing care needs.

(c) A significant medical condition or event occurs that prevents the primary caregiver from providing care or services as documented by a physician.

(5) Exceptions to the cost limitations in section (3) of this rule beyond ninety-days will be:

(a) Evaluated using the criteria in section (4)(a) through (4)(c) of this rule on an individual basis by a SPD designee and the CIIS Supervisor; and

(b) Made when part of legislatively mandated cost of living adjustments.

(6) SPD will not pay for services that are:

(a) Abusive, aversive or demeaning;

(b) Experimental;

(c) Illegal;

(d) Determined unsafe for the general public by recognized child and consumer safety agencies;

(e) Not necessary or cost effective;

(f) Educational services for school-age children, including professional instruction, formal training and tutoring in communication, socialization and academic skills; or

(g) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds.

(7) When two children in the same home or setting qualify for MICP services, the same provider must provide services to all qualified children if services can be safely delivered by a single provider, as determined by the CIIS Service Coordinator.

(8) IN-HOME DAILY CARE.

(a) In-home daily care services include a combination of direct provider support assistance with ADLs, nursing services or other supportive services provided by qualified providers and agencies. Hours will be authorized only to support a parent in their primary caregiving role. The extent of the services may vary, but the extent of service is limited as

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described in this rule. In-home daily care services provided by qualified providers or agencies include:

- (A) Basic personal hygiene - Assistance with bathing and grooming;
- (B) Toileting/bowel and bladder care - Assistance in the bathroom, diapering, external cleansing of perineal area and care of catheters;
- (C) Mobility - Transfers, comfort, positioning and assistance with range of motion exercises;
- (D) Nutrition - Special diets, monitoring intake and output, and feeding;

(E) Skin care - Dressing changes;

(F) Supervision - Providing an environment that is safe and meaningful for the child, interacting with the child to prevent danger to the child and others, and assisting the child with appropriate leisure activities;

(G) Communication - Assisting the child in communicating, using any means used by the child;

(H) Neurological - Monitoring of seizures, administering medication and observing status; and

(I) Other personal care tasks or services.

(b) When any of the in-home daily care services listed in section (8)(a)(A) through (8)(a)(I) of this rule are essential to the health and welfare of the child, the following supportive services can also be provided:

(A) Housekeeping tasks necessary to maintain a healthy and safe environment for the child;

(B) Arranging for necessary medical equipment, supplies and medications;

(C) Arranging for necessary medical appointments;

(D) Accompanying the child to appointments, outings and community-based activities; and

(E) Activities to enhance development.

(c) The number of in-home daily care service hours may be spread throughout the time authorized in the voucher or used in large blocks as the parent determines.

(d) All in-home daily care services must:

(A) Be prior-authorized by CIIS before services begin;

(B) Be based on the assessed service needs of the child consistent with, and documented in, the Plan of Care as determined by the CIIS Service Coordinator;

(C) Be delivered through the most cost effective method as determined by the CIIS Service Coordinator; and

(D) Include a physician's order when nursing services are to be provided. The CIIS Service Coordinator will determine whether payment of nursing services or the hours of in-home daily care services as ordered by the physician will be authorized for payment according to these rules.

(e) In-home daily care services exclude:

(A) Hours that will supplant the natural supports and services available from family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours solely to allow a parent to work or attend school; and

(C) The authorization of hours or level of care not supported by the assessed needs of the child as documented in the Plan of Care.

(9) RESPIRE.

(a) Respite services are provided to the child on a periodic or intermittent basis furnished because of the temporary absence of, or need for relief of, the primary caregiver. Respite includes both day and overnight care and may be provided in the child's home, qualified provider's home or qualified facility. The following types of qualified providers will be authorized to provide respite care:

(A) Individual respite provider;

(B) Licensed day care center;

(C) Group home;

(D) Foster home; and

(E) Disability-related or therapeutic recreational camp.

(b) Respite services will not be authorized;

(A) Solely to allow caregivers to attend school or work;

(B) On more than a periodic schedule;

(C) For more than 56 days in a calendar year;

(D) For more than 14 consecutive days in a calendar month;

(E) For more than 10 days per individual plan year when provided at a specialized camp; or

(F) To pay for room and board if provided at a licensed site or specialized camp;

(10) SPECIALIZED EQUIPMENT AND SUPPLIES.

(a) Specialized equipment and supplies include the purchase of devices, aids, controls, supplies or appliances that are necessary to enable a child to increase their abilities to perform activities of daily living, or to

perceive, control or communicate with the environment in which they live. Specialized equipment and supplies could include:

(A) Communication devices;

(B) Adaptive clothing;

(C) Adaptive eating equipment;

(D) Adaptive sensory or habilitation devices or supplies;

(E) Incontinent supplies; and

(F) Increased utility costs associated with medically necessary equipment and procedures.

(b) When a professional is required to assess, identify, adapt or fit the equipment, SPD will include this cost in the purchase price of the equipment.

(c) To be authorized, specialized equipment and supplies must;

(A) Be in addition to any medical equipment and supplies furnished under the Oregon Health Plan;

(B) Be determined necessary to the daily functions of the child; and

(C) Be directly related to the child's disability.

(d) Specialized equipment and supplies exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the child;

(B) Specialized medical equipment and supplies intended to supplant similar items furnished under the Oregon Health Plan;

(C) Items available through family, community or other governmental resources; or

(D) Items that are considered unsafe for the child.

(11) MOTOR VEHICLE ADAPTATIONS.

(a) Motor vehicle adaptations are physical adaptations to a vehicle that are necessary to ensure the health, welfare, and safety of the child and meet the unique needs of the child. Motor vehicle adaptations will only be authorized:

(A) For the primary vehicle used by the child;

(B) When the adaptation is directly related to the child's disability; and

(C) When cost effective.

(b) Motor vehicle adaptations do not include typical repair or general maintenance and upkeep required by a motor vehicle.

(12) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.

(a) Environmental accessibility adaptations are physical adaptations to a child's home that are necessary to ensure the health, welfare, and safety of the child in the home, or that are necessary to enable the child to function with greater independence around the home and in family activities. Environmental accessibility adaptations also include an environmental modification consultation necessary to evaluate the family home and make plans to modify the home to ensure the health, welfare and safety of the child. Environmental accessibility adaptations will only be authorized by CIIS:

(A) When they are related to the child's disability

(B) When they are determined to be the most cost effective solution.

(C) When provided in accordance with applicable state or local building codes by licensed contractors. Any modification that impedes egress must be approved only if a risk assessment demonstrates no safer solution and a safety plan is signed by the parent.

(D) When authorized in writing by the owner of a rental structure prior to initiation of the work. This does not preclude any requirement related to the Reasonable Accommodation Act.

(b) For environmental accessibility adaptations that, singly or together, exceed \$5,000, SPD will protect its interest for the entire amount of the adaptations through liens or other legally available means.

(c) Environmental accessibility adaptations exclude;

(A) Adaptations or improvements to the home that are of general utility and are not for the direct safety, remedial or long term benefit to the child; and

(B) Adaptations that add to the total square footage of the home.

(13) HOMEMAKER AND CHORE. Homemaker and Chore services are services that are required to maintain the home in a clean, sanitary and safe environment. Homemaker services include general housekeeping activities while chore services consist of heavy household chores including washing floors, windows and walls.

(a) Homemaker and chore services are authorized when the individual regularly responsible for these activities is temporarily absent or unable to manage the home and care for him or herself or others in the home or to allow the caregiver more time to care for the child enrolled in the MICP.

(b) Homemaker services may not exceed 24 hours per month.

(c) Chore services are considered one-time or intermittent services that are not available on a routine basis.

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(d) Homemaker and chore services must be prior authorized by the CIIS Service Coordinator after agreement to scope of work, hours and cost.

(14) PHYSICAL THERAPY, OCCUPATIONAL THERAPY, AND SPEECH AND LANGUAGE THERAPY.

(a) Physical, occupational, and speech and language therapy are service provided in the home or clinic setting by a physical therapist, occupational therapist, or speech and language therapist as defined under the Oregon Health Plan except that the amount and duration specified in the State Medicaid Plan do not apply. Physical, occupational, and speech and language therapy service are provided as an extension to state plan services and include interventions and treatments that are commonly accepted practice. To be authorized, the physical, occupational, and speech and language therapy service must:

(A) Have exhausted the limits identified under the Oregon Health Plan and private insurance;

(B) Be denied by the Oregon Health Plan for additional treatments;

(C) Be assessed by the professional, CIIS Services Coordinator and physician concluding that the child would benefit by continued services;

(D) Include MD orders and therapist's treatment plan with the authorization request;

(E) Identify the number of services provided in the plan year until Oregon Health Plan or private insurance renew; and

(F) Be reviewed by the CIIS Service Coordinator.

(b) The following physical, occupational, and speech and language therapy service is excluded:

(A) Services and treatments that supplant those provided under the Oregon Health Plan or other resources;

(B) Services and treatments that are not commonly accepted practice;

(C) Services and treatments offered by a non-licensed professional; and

(D) Services that are not defined under the approved State Medicaid Plan.

(15) NON-MEDICAL TRANSPORTATION.

(a) Non-medical transportation for children served by the MICP includes transportation provided in order to enable a child to gain access to MICP and other community services, activities and resources as specified in the Plan of Care.

(b) Whenever possible, family, neighbors, friends or community agencies that can provide non-medical transportation service to the child without charge must be utilized.

(c) Authorization of the service in the Plan of Care will identify the parameters and limits of non-medical transportation service for each child.

(d) Non-medical transportation service for the child must be provided through the most cost effective means identified and may be purchased through local commercial transportation or mileage reimbursement to a qualified provider.

(e) Non-medical transportation services are provided for the child and the child must always be present.

(f) Non-medical transportation excludes:

(A) Transportation to and from school and medical appointments;

(B) Transportation provided by parents, guardians or legally responsible adults;

(C) Transportation typically provided by parents for children of similar age without disabilities; and

(D) Mileage reimbursement in excess of the published federal rate at http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentIdType=GSA_BASIC.

(16) FAMILY TRAINING. Family training services include:

(a) Training and counseling services that increase the parent's capability to care for and maintain the child in the family home.

(b) Disability related resource materials including books, DVD and other media.

(A) To be authorized, the materials must relate to the child's specific disability.

(B) Resource materials will not be authorized when determined by the CIIS Service Coordinator to be available for loan from other available resources such as local, state or specialty libraries.

(c) Conferences, workshop registrations and group trainings that offer information, education, training and materials about the child's disability, medical and health conditions.

(A) To be authorized, the conference, workshop or group training must:

(i) Be directly related to the child's disability; and

(ii) Increase the knowledge and skills of the parent to care for and maintain the child in the family home.

(B) Conference, workshop or group training costs will not be authorized for:

(i) Travel and lodging expenses;

(ii) Meals not included in the registration cost;

(iii) Services otherwise provided under the Oregon Health Plan or available through other resources; and

(iv) Individual family members who are employed to care for the child.

(d) Counseling services that include those services provided by a MSW or psychologist to assist the parent with the stresses of having a child with a disability.

(A) Authorized counseling services must:

(i) Be provided by licensed providers;

(ii) Directly relate to the child's disability and the ability of the parents to care for their child;

(iii) Be short term; and

(iv) Have treatment goals prior approved by the CIIS Service Coordinator.

(B) Counseling services are excluded for:

(i) Therapy that could be obtained through Oregon Health Plan or other payment mechanisms;

(ii) Marriage therapy;

(iii) Therapy to address parent or other family members' psychopathology; and

(iv) Counseling that addresses stressors not directly attributed to the child eligible for the MICP.

(17) SPECIALIZED DIET.

(a) A specialized diet is specific to a child's medical condition or diagnosis, and includes specially prepared food or purchase of particular types of food needed to sustain a child in the family home. Specialized diet services include the purchase of registered dietician services. In order to be authorized:

(A) The diet must be ordered by a physician licensed by the Oregon Board of Medical Examiners;

(B) The diet must be periodically monitored by a dietician; and

(C) The foods must be on the approved list developed by the SPD;

(b) The maximum monthly purchase for specialized diet supplies must not exceed \$100 per month.

(c) The following will not be authorized:

(A) Special diets and dietician services otherwise available under the Oregon Health Plan or other sources;

(B) Restaurant and prepared foods;

(C) Vitamins; and

(D) Food that constitutes a full nutritional regime.

(18) TRANSLATION.

(a) Translation service includes the services of a translator or interpreter required for a monolingual caregiver. Translation service is provided solely for the purpose of safely implementing the Plan of Care between parent, child and provider for those MICP services delivered within the family home. The purpose of translation services is to establish and maintain the same understanding of the child's care requirements between the private providers and the families who must work together to implement the Plan of Care.

(b) Translation services will not be authorized for administrative purposes or services available through Medicaid.

(19) NURSING DELEGATION.

(a) Nursing delegation is the purchase of individualized consultation from a registered nurse in order to delegate tasks of nursing care in select situations. Tasks of nursing care are those procedures that require nursing education and the license of a nurse to perform.

(b) Nursing delegation is required for unlicensed providers paid by SPD when the child requires tasks of nursing care.

(c) Nursing delegation occurs only after:

(A) Assessing the child and the ability of the delegate to perform a specific task;

(B) Teaching the task;

(C) Documenting the task; and

(D) Ensuring on-going assessment of the child and re-evaluation and supervision of the delegate.

(d) Nursing delegation consultation must include:

(A) An assessment of the child that determines the child's condition is stable and predictable.

(B) An assessment of the unlicensed provider that determines the ability of the provider to understand the task and safely perform the task without direct nursing supervision. The task should not be delegated if, in the

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RN's judgment, the provider is unable to understand or perform the task in a safe and accurate manner.

(C) Provision of initial direction by teaching the task of nursing care, including:

- (i) The proper procedure and technique;
- (ii) Why the task of nursing care is necessary;
- (iii) The risks associated with the task;
- (iv) Anticipated side effects;
- (v) The appropriate response to untoward or side effects;
- (vi) Observation of the child's response;
- (vii) Documentation of the task of nursing care; and
- (viii) Observation of the unlicensed person performing the task to ensure the task is performed safely and accurately.

(D) Written instructions regarding the task including:

- (i) A step by step outline of how the task is to be performed;
- (ii) Signs and symptoms to be observed;
- (iii) Guidelines for what to do if signs and symptoms occur;
- (iv) Instruction to the provider that the task is specific to the child and

is not transferable to other children nor can it be taught to other providers by the delegated provider; and

(v) Determination and documentation of the need and time frame for the next assessment and supervisory visit that may be often until the delegation is complete.

(I) The initial return assessment and supervisory visit must be made within 60 days from the initial date of the delegation.

(II) Subsequent visits must be no greater than every 180 days.

(20) BEHAVIOR CONSULTATION.

(a) Behavior consultation is the purchase of individualized consultation provided in the family home only as needed, to respond to a specific problem or behavior identified by the parents and CIIS Service Coordinator. Behavior consultation will only be authorized to support families in their caregiving role, not as an educational service.

(b) Behavior consultation must include:

(A) Working with the parent to identify:

(i) Areas of a child's home life that are of most concern for the parent and child;

(ii) The formal or informal responses the parent or provider has used in those areas; and

(iii) The unique characteristics of the parent that could influence the responses that would work with the child.

(B) An assessment of the child that includes:

(i) Specific identification of the behaviors or areas of concern;

(ii) Identification of the settings or events likely to be associated with or to trigger the behavior;

(iii) Identification of early warning signs of the behavior;

(iv) Identification of the probable reasons that are causing the behavior and the needs of the child that are being met by this behavior, including the possibility that the behavior is:

(I) An effort to communicate;

(II) The result of a medical condition;

(III) The result of an environmental cause; or

(IV) The symptom of an emotional or psychiatric disorder.

(v) Evaluation and identification of the impact of disabilities, such as autism, blindness, deafness, etc., that impact the development of strategies and affect the child and the area of concern; and

(vi) Assessment of current communication strategies.

(C) Development of a variety of positive strategies that assist the parent and provider to help the child use acceptable, alternative actions to meet the child's needs in the most cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by a parent and provider to the early warning signs.

(i) Positive, preventive interventions must be emphasized.

(ii) The least intrusive intervention possible must be used.

(iii) Abusive or demeaning interventions must never be used.

(iv) The strategies must be adapted to the specific disabilities of the child and the style or culture of the parent.

(D) Development of emergency and crisis procedures to be used to keep the child, parent and provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-adversive interventions shall be utilized. CIIS will not pay a provider to use physical restraints on a child receiving MICP services.

(E) A written Behavior Support Plan that includes the following:

(i) Use of clear, concrete language that is understandable to the parent and provider; and

(ii) Describes the assessment and strategies and procedures to be used.

(F) Teaching the provider and parent the strategies and procedures to be used.

(21) GOODS, SERVICES AND SUPPLIES.

(a) Goods, services and supplies paid for by SPD must be documented by receipts and the receipts maintained by CIIS for five years. If no receipt is available, the parent must submit to CIIS in writing, a statement that they received the goods, service or supplies and the date they were received on.

(b) SPD will protect its interest through any legally allowable means for any good, service, or supply as determined by SPD.

(c) SPD can expend its funds through contract, purchase order, use of credit card, payment directly to the vendor or any other legal payment mechanism.

Stat. Auth.: ORS 409.050 & 417.345

Stats. Implemented: ORS 430.215, 427.007, 417.340 - 417.355

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

411-355-0050

Standards for Providers Paid with MICP Funds

(1) PROVIDER QUALIFICATIONS.

(a) Each provider who is paid as a contractor, a self-employed person, or an employee of the parent to provide homemaker and chore, in-home daily care, respite, transportation, family training, occupational therapy, physical therapy, speech and language therapy, dietician, nursing delegation, or specialized supports must:

(A) Be at least 18 years of age;

(B) Maintain a drug-free work place;

(C) Be legally eligible to work in the United States;

(D) Not be on the current CMS list of excluded or debarred providers (<http://exclusions.oig.hhs.gov/>);

(E) Not be a parent, step parent or legal guardian of the child;

(F) Consent to and pass a criminal history check by DHS as described in OAR chapter 407, division 007 and be free of convictions or founded allegations of abuse or neglect by the appropriate agency, including but not limited to DHS prior to enrolling as a provider.

(i) DHS requires a criminal history check for any provider having regular contact with children in the home.

(ii) DHS may require that the provider provide fingerprints and processing fees for the purpose of a criminal history check.

(iii) Criminal history rechecks will be performed bi-annually, or as needed, if a report of criminal activity has been received by DHS;

(G) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any in-home daily care; and

(H) Demonstrate by background, education, references, skills, and abilities that the individual is capable of safely and adequately performing the care required. Such demonstration must be confirmed in writing by the parent and include:

(i) Ability and sufficient education to follow oral and written instructions and keep any records required;

(ii) Responsibility, maturity, exercising sound judgment and reputable character;

(iii) Ability to communicate with the child;

(iv) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child being cared for;

(v) Current, valid, and unrestricted appropriate professional license or certification where care and supervision requires specific professional education, training and skill;

(vi) Understanding requirements of maintaining confidentiality and safeguarding the child's information; and

(vii) If providing transportation, a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation service.

(b) A provider is not an employee of DHS or the state of Oregon and is not eligible for state benefits and immunities, including but not limited to, Public Employees' Retirement System or other state benefit programs.

(c) If the provider or billing provider is an independent contractor, during the terms of the contract, the provider or billing provider must maintain in force at the providers own expense, professional liability insurance with a combined single limit of not less than \$1,000,000 each claim, incident or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

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(A) The provider or billing provider must furnish evidence of insurance coverage to CIIS prior to beginning work.

(B) There must be no cancellation of insurance coverage without 30 days written notice to CIIS.

(d) If the provider is an employee of the parent, the provider must submit to CIIS documentation of immigration status required by federal statute. CIIS will maintain documentation of immigration status required by federal statute, as a service to the parent.

(e) A provider must immediately notify the parent and CIIS, if appropriate, of injury, illness, accidents, or any unusual circumstances that may have a serious effect on the health, safety, physical, emotional well being or level of service required by the child for whom services are being provided.

(f) Providers described in ORS chapter 418 are required to report suspected child abuse to the police or their local office of DHS in the manner described in ORS chapter 418.

(2) **BEHAVIOR CONSULTANTS.** Behavior consultants providing specialized consultations must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services as outlined in OAR 411-355-0040 including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have current certification demonstrating completion of Level II training in Oregon Intervention Systems; and

(c) Submit a resume to CIIS indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field and at least one year of experience with people with developmental disabilities who present difficult or dangerous behaviors; or

(B) Three years experience with people with developmental disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(C) Additional education or experience may be required to safely and adequately provide the services described in OAR 411-355-0040.

(3) **NURSES.** Nurses providing direct care or delegation services must:

(a) Have a current Oregon nursing license; and

(b) Submit a resume to CIIS indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law, including at least one year of experience with people with developmental disabilities.

(4) **ENVIRONMENTAL MODIFICATION CONSULTANTS.** Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing individual needs and developing cost effective plans that will make the home safe and accessible for the individual.

(5) **ENVIRONMENTAL ACCESSIBILITY ADAPTATION PROVIDERS.** Environmental accessibility adaptation providers must be building contractors licensed as applicable under either OAR chapter 812, Construction Contractor's Board, or OAR chapter 808, Landscape Contractors Board.

(6) **FAMILY TRAINING PROVIDERS.** Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Social workers licensed under ORS 675.530;

(c) Counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

(7) **DIETICIANS.** Dieticians providing specialized diets must be licensed according to ORS 691.415 through 691.465.

Stat. Auth.: ORS 409.050 & 417.345

Stats. Implemented: ORS 430.215, 427.007, 417.340 - 417.355

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

411-355-0060

Standards for Provider Organizations Paid by SPD

(1) A provider organization may not require additional certification to provide respite, community inclusion or emergent services if they are licensed or certified as:

(a) 24-hour residential programs under OAR chapter 411, division 325;

(b) Foster homes for children with developmental disabilities under OAR chapter 411, division 346;

(c) Child care centers under OAR chapter 414, division 300; or

(d) Organizational camps under OAR chapter 333, division 030.

(2) Provider organizations licensed or certified as described in section (1) of this rule may be considered sufficient demonstration of ability to:

(a) Recruit, hire, supervise and train qualified staff;

(b) Provide services according to Individual Support Plans; and

(c) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(3) A provider organization that wishes to enroll with the MICP must maintain and submit evidence upon initial application and upon request by CIIS the following:

(a) Current criminal history checks on each employee who will be providing services in a home showing that the employee has no disqualifying criminal convictions;

(b) Professional liability insurance that meets the requirements of OAR 411-355-0050; and

(c) Any licensure required of the agency by the state of Oregon or federal law or regulation.

(4) Provider organizations must assure that all individuals directed by the provider organization as employees, contractors, or volunteers to provide services paid for with MICP funds meet standards for qualification of providers outlined in OAR 411-355-0050.

Stat. Auth.: ORS 409.050 & 417.345

Stats. Implemented: ORS 430.215, 427.007, 417.340 - 417.355

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

411-355-0070

Standards for General Business Providers paid by SPD

General business providers providing services to children paid with MICP funds must hold any current license appropriate to function required by the state of Oregon or federal law or regulation.

(1) Home health agencies must be licensed under ORS 443.015.

(2) In-home care agencies must be licensed under ORS 443.315.

(3) Public transportation providers must be regulated according to established standards and private transportation providers must have business license and drivers licensed to drive in Oregon.

(4) Vendors and medical supply companies providing specialized medical equipment and supplies must have a current retail business license and, if vending medical equipment, be enrolled as Medicaid providers through the Division of Medical Assistance Programs.

(5) Providers of personal emergency response systems must have a current retail business license.

(6) Vendors and supply companies providing specialized diets must have a current retail business license.

Stat. Auth.: ORS 409.050 & 417.345

Stats. Implemented: ORS 430.215, 427.007, 417.340 - 417.355

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

411-355-0080

Documentation Needs for In-Home Daily Care and Specialized Consultation

(1) Original, accurate time sheets of MICP services, dated and signed by the provider and the parent after the services are provided, must be maintained and submitted to CIIS with any request for payment for services.

(2) Requests for payment for MICP services must:

(a) Include the voucher that prior authorized the services;

(b) Be signed by the parent of the child after the services were delivered, verifying that the services were delivered as billed; and

(c) Be signed by the provider or billing provider, acknowledging agreement upon request with the terms and condition of the voucher and attesting that the hours were delivered as billed.

(3) Documentation of provided services must be provided to the CIIS Service Coordinator and maintained in the child's residence or the place of business of the provider of services. Payment can only be made for services related to the child's disability as outlined in the Plan of Care.

(4) Vouchers and time sheets will be retained by CIIS for at least five years from the date of service.

(5) Behavior consultants must submit to CIIS the following written in clear, concrete language, understandable to the parent and provider:

(a) An evaluation of the child, the parent's concerns, the environment of the child, current communication strategies used by the child and used by others with the child, and any other disability of the child that would impact the appropriateness of strategies to be used with the child; and

(b) Any behavior plan or instructions left with the parent or provider that describes the suggested strategies to be used with the child.

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(6) Nurses providing delegation services must submit to CIIS the following written in clear, concrete language, understandable to the parent and provider:

(a) A copy of the written statement acknowledging the specific provider receiving training, the nursing tasks delegated to that provider and the date of the next scheduled review; and

(b) Any nursing delegation plan or instructions left with the parent or provider.

(7) Documentation of provided services must be maintained by the billing provider for at least seven years from the date of service.

(8) Upon written request from DHS, the Oregon Department of Justice Medicaid Fraud Unit or Centers for Medicare and Medicaid Services or their authorized representatives, providers or billing providers must furnish requested documentation immediately or within the time frame specified in the written request. Failure to comply with the request may be deemed by SPD as reason to deny or recover payments.

(9) Access to records by DHS inclusive of medical or nursing records, behavior or psychiatric records, and financial records, does not require authorization or release by the parent.

Stat. Auth.: ORS 409.050 & 417.345

Stats. Implemented: ORS 430.215, 427.007, 417.340 - 417.355

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

411-355-0090

Payment for In-Home Daily Care and Specialized Consultants

(1) Payment for MICP services described in OAR 411-355-0040 will be made after services are delivered as authorized and required documentation received by the CIIS Service Coordinator.

(2) Rates will be individually negotiated by SPD, based on the individual needs of the child, within the guidelines published by SPD.

(3) Authorization must be obtained prior to the delivery of any services for those services to be eligible for payment.

(4) Providers must request authorization for payment of services provided during an unforeseeable emergency on the first business day following the emergency service. The CIIS Service Coordinator will determine if the service is eligible for payment.

(5) SPD will make payment to the individual employee of the parent on behalf of the parent. SPD will pay the employer's share of FICA and withhold the employee's share of FICA as a service to the parent as the provider's employer.

(6) The delivery of authorized services must occur so that any individual employee of the parent does not exceed forty hours per work week. Services will not be authorized that require the payment of overtime, without written prior authorization by the CIIS Supervisor.

(7) SPD will not pay for any hours of service provided by a provider beyond 16 hours in any 24-hour period unless the hours are part of a 24-hour rate negotiated by SPD and there is evidence the child can be safely served with a 24-hour rate. Exceptions shall require written authorization by the CIIS Supervisor.

(8) Holidays are paid at the same rate as non-holidays.

(9) Travel time to reach the job site is not reimbursable.

(10) Requests for payments must be submitted to CIIS within three months of the delivery of services in order to be eligible for payment.

(11) Payment by SPD for MICP services will be considered full payment for the services rendered under Title XIX. Under no circumstances will the provider or billing providers demand or receive additional payment for these services from the parent or any other source.

(12) Medicaid funds are the payor of last resort. The provider or billing provider must bill all third party resources before Medicaid unless another arrangement is agreed upon by CIIS in the Plan of Care.

(13) SPD reserves the right to make a claim against any third party payer before or after making payment to the provider of service.

(14) SPD may void without cause prior authorizations that have been issued.

(15) Upon submission of the voucher for payment, the provider agrees that it has complied with:

(a) All SPD rules in OAR chapter 411;

(b) Title V, Section 504 of the Rehabilitation Act of 1973;

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(16) All billings must be for services provided within the provider's licensure.

(17) It is the responsibility of the provider to submit true and accurate information on the voucher. Use of a billing provider does not abrogate the

provider's responsibility for the truth and accuracy of submitted information.

(18) No person will submit to CIIS:

(a) A false voucher for payment;

(b) A voucher for payment that has been or is expected to be paid by another source; or

(c) Any voucher for services that have not been provided.

(19) SPD will only make payment to the enrolled provider who actually performs the service or the enrolled billing provider. Federal regulations prohibit SPD from making payment to collection agencies.

(20) Payments may be denied if any provisions of these rules are not complied with.

(21) Overpayments will be recouped. The amount to be recovered:

(a) Will be the entire amount determined or agreed to by SPD;

(b) Is not limited to the amount determined by criminal or civil proceedings; and

(c) Will include interest to be charged at allowable state rates.

(22) SPD will deliver to the provider, by registered or certified mail, or in person, a request for repayment of the overpayment or notification of recoupment of future payments.

(23) Payment schedules with the interest can be negotiated at the discretion of SPD.

(24) If recoupment is sought from a parent who received services, contested hearing rights in OAR 411-355-0110 will apply.

Stat. Auth.: ORS 409.050 & 417.345

Stats. Implemented: ORS 430.215, 427.007, 417.340 - 417.355

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

411-355-0100

Complaints and Grievances

(1) COMPLAINTS AND GRIEVANCES. CIIS will address all grievances in accordance with CIIS written policies, procedures and rules. Copies of the procedures for resolving grievances will be maintained on file at the CIIS offices. These policies and procedures, at minimum, will address:

(a) Informal resolution. The parent or legal guardian of a child must have an opportunity to informally discuss and resolve any complaint or grievance regarding action taken by CIIS that is contrary to law, rule, or policy and that does not meet the criteria for an abuse investigation. Choosing an informal resolution does not preclude the parent to pursue resolution through formal grievance processes.

(b) Receipt of complaints. CIIS will maintain a log of all complaints regarding the MICP provision of services received via phone calls, e-mails or otherwise in writing.

(A) The complaint log will, at a minimum, include the following:

(i) The date the complaint was received;

(ii) The person taking the complaint;

(iii) The nature of the complaint;

(iv) The name of the person making the complaint, if known; and

(v) The disposition of the complaint.

(B) Child welfare and law enforcement reports of abuse or neglect will be maintained separately from the central complaint and grievance log.

(c) Response to complaints. CIIS staff response to the complaint will be provided within five working days following receipt of the complaint and will include:

(A) An investigation of the facts supporting or disproving the complaint; and

(B) Agreement to resolve the complaint. Any agreement to resolve the complaint will be reduced to writing and will be specifically approved by the grievant. The grievant will be provided with a copy of such agreement.

(d) Review by the CIIS Manager. If the complaint involves CIIS staff or services, or if the complaint is not or cannot be resolved with CIIS staff, a review by the CIIS Manager will be completed. CIIS Manager response to the complaint will be made in writing, provided within 30 days following receipt of the complaint and include a response to the complaint as described in section (1)(c) of this rule.

(e) Third-party review when complaints are not resolved by the CIIS Manager. Unless the grievant is a Medicaid recipient who has elected to initiate the Medicaid Fair Hearing process according to OAR 411-355-0110, a complaint involving the provision of service or a service provider may be submitted to SPD for an administrative review.

(A) The grievant must submit to SPD a request for an administrative review within 15 days from the date of the decision by the CIIS Manager.

(B) Upon receipt of a request for an administrative review, the Assistant Director will appoint an Administrative Review Committee and name the Chairperson. The Administrative Review Committee will be

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comprised of two representatives of SPD. Committee representatives must not have any direct involvement in the provision of services to the grievant or have a conflict of interest in the specific case being grieved.

(C) The Administrative Review Committee will review the complaint and the decision by the CIIS Manager and make a recommendation to the Assistant Director within 45 days of receipt of the complaint unless the grievant and the Administrative Review Committee mutually agree to an extension.

(D) The Assistant Director will consider the report and recommendations of the Administrative Review Committee and make a final decision. The decision will be made in writing and issued within 10 days of receipt of the recommendation by the Administrative Review Committee. The written decision will contain the rationale for the decision.

(E) The decision of the Assistant Director is final. Any further review is pursuant to the provision of ORS 183.484 for judicial review.

(f) Documentation of complaint. Documentation of each complaint and its resolution will be filed or noted in the grievant's record.

(2) NOTIFICATION. Upon enrollment and annually thereafter, the CIIS will inform each child's parent orally and in writing, using language, format, and methods of communication appropriate to the parent's needs and abilities, of the following:

(a) CIIS grievance policy and procedures, including the right to an administrative review and the method to obtain an administrative review; and

(b) The right of a Medicaid recipient to a Medicaid Fair Hearing as per OAR 411-355-0110 and of the method to obtain a Medicaid Fair Hearing.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 430.215, 427.007, 417.340 - 417.355
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

411-355-0110

Denial, Termination, Suspension, Reduction or Eligibility for Services for Individual Medicaid Recipients

(1) MEDICAID FAIR HEARING RIGHTS. Each time CIIS takes an action to deny, terminate, suspend or reduce a child's access to services covered under Medicaid, CIIS will notify the child's parent of the right to a hearing and the method to obtain a hearing. CIIS will mail the notice by certified mail, or personally serve it to the child's parent 10 days or more prior to the effective date of an action.

(a) CIIS will use, Notice of Hearing Rights, or a comparable SPD-approved form for such notification. This notification requirement will not apply if an action is part of, or fully consistent with, the Plan of Care, or the child's parent has agreed with the action by signature to the Plan of Care.

(b) The parent may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to the Department of Human Services, Seniors and People with Disabilities, CIIS, 500 Summer St. N.E., E10 Salem, Oregon.

(c) A notice required by section (1) of this rule will include:

(A) The action CIIS intends to take;

(B) The reasons for the intended action;

(C) The specific Oregon Administrative Rules that supports or the change in federal or state law that requires the action;

(D) The appealing party's right to request a Medicaid Fair Hearing in accordance with OAR chapter 137, Oregon Attorney General's Model Rules and 42 CFR Part 431, Subpart E;

(E) A statement that CIIS files on the subject of the Medicaid Fair Hearing automatically become part of the Medicaid Fair Hearing record upon default for the purpose of making a prima facie case;

(F) A statement that the actions specified in the notice will take effect by default if the CIIS representative does not receive a request for a Medicaid Fair Hearing from the party within 45 days from the date that CIIS mails the notice of action;

(G) In cases of an action based upon a change in law, the circumstances under which a Medicaid Fair Hearing will be granted; and

(H) An explanation of the circumstances under which MICP services will be continued if a Medicaid Fair Hearing is requested.

(d) If the parent disagrees with the decision or proposed action of CIIS to deny, terminate, suspend or reduce a child's access to services covered under Medicaid, the parent may request a Medicaid Fair Hearing as provided in ORS 183. The request for a Medicaid Fair Hearing must be in writing on Form DHS 443 and signed by the parent. The signed form (DHS 443) must be received by CIIS within 45 days from the date of CIIS notice of denial.

(e) The parent may request an expedited Medicaid Fair Hearing if the parent feels that there is immediate, serious threat to the child's life or

health should the normal timing of the Medicaid Fair Hearing process be followed.

(f) If the parent requests a Medicaid Fair Hearing before the effective date of the proposed actions and requests that the existing services be continued, CIIS will continue the services.

(A) CIIS will continue the services until whichever of the following occurs first, but in no event will services be continued in excess of 90 days from the date of the parent's request for a Medicaid Fair Hearing:

(i) The current authorization expires;

(ii) The hearings officer issues a proposed order and CIIS renders a final order about the complaint; or

(iii) The child is no longer eligible for Medicaid benefits.

(B) CIIS will notify the child's parent that it is continuing the service. The notice will inform the parent that, if the hearing is resolved against the child, SPD may recover the cost of any services continued after the effective date of the continuation notice.

(g) CIIS will reinstate services if:

(A) CIIS takes an action without providing the required notice and the parent requests a Medicaid Fair Hearing;

(B) CIIS does not provide the notice in the time required in this rule and the parent requests a Medicaid Fair Hearing within 10 days of the mailing of the notice of action; or

(C) The post office returns mail directed to the parent, but the location of the parent becomes known during the time that the child is still eligible for services.

(h) CIIS will promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the Medicaid Fair Hearing decision is favorable to the child, or CIIS decides in the child's favor before the Medicaid Fair Hearing.

(i) The CIIS representative and the parent may have an informal conference, without the presence of the hearings officer, to discuss any of the matters listed in OAR 137-003-0575, Prehearing Conferences. The informal conference may also be used to:

(A) Provide an opportunity for CIIS and the parent to settle the matter;

(B) Ensure the child's parent understands the reason for the action that is the subject of the Medicaid Fair Hearing request;

(C) Give the parent an opportunity to review the information that is the basis for that action;

(D) Inform the parent of the rules that serve as the basis for the contested action;

(E) Give the parent and CIIS the chance to correct any misunderstanding of the facts;

(F) Determine if the parent wishes to have any witness subpoenas issued; and

(G) Give CIIS an opportunity to review its action.

(j) The child's parent may, at any time prior to the hearing date, request an additional conference with the CIIS representative. At the CIIS representative's discretion, the CIIS representative may grant such a conference if it will facilitate the Medicaid Fair Hearing process.

(k) CIIS may provide the parent the relief sought at any time before the final order is served.

(l) A parent may withdraw a Medicaid Fair Hearing request at any time. The withdrawal will be effective on the date CIIS or the hearings officer receives it. CIIS will send a final order confirming the withdrawal to the last known address of the child's parent. The child's parent may cancel the withdrawal up to 10 workdays following the date such an order is issued.

(2) PROPOSED AND FINAL ORDERS.

(a) In a contested case, the hearings officer will serve a proposed order on the child and CIIS.

(b) If the hearings officer issues a proposed order that is adverse to the child, the child's parent may file exceptions to the proposed order to be considered by CIIS. The exceptions must be in writing and must reach CIIS not later than 10 days after service of the proposed order. The child's parent may not submit additional evidence after this period unless CIIS prior approves.

(c) After receiving the exceptions, if any, CIIS may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, CIIS may issue an amended proposed order.

(3) The performing or billing provider must submit relevant documentation to CIIS within five working days at the request of CIIS when a hearing has been requested.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 430.215, 427.007, 417.340 - 417.355
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

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411-355-0120

Sanctions for MICP Providers

(1) Sanctions may be imposed on a provider when any of the following conditions have been determined by CIIS to have occurred:

(a) The provider has been convicted of any crime that would have resulted in an unacceptable criminal history check upon hiring or issuance of a provider number;

(b) The provider has been convicted of unlawfully manufacturing, distributing, prescribing or dispensing a controlled substance;

(c) The provider's license has been suspended, revoked, otherwise limited or surrendered;

(d) The provider has failed to safely and adequately provide the services authorized;

(e) The provider has had an allegation of abuse or neglect substantiated against them;

(f) The provider has failed to cooperate with any investigation or grant access to or furnish, as requested, records or documentation;

(g) The provider has billed excessive or fraudulent charges or has been convicted of fraud;

(h) The provider has made a false statement concerning conviction of crime or substantiation of abuse;

(i) The provider has falsified required documentation;

(j) The provider has not adhered to the provisions of these rules; or

(k) The provider has been suspended or terminated as a provider by another agency within DHS.

(2) The following sanctions may be imposed on a provider by CIIS:

(a) The provider may be terminated from participation in the MICP;

(b) The provider may be suspended from participation in the MICP for a specified length of time or until specified conditions for reinstatement are met and approved by the state; and

(c) SPD may withhold payments to the provider.

(3) If CIIS makes a decision to sanction a provider, the provider will be notified by mail of the intent to sanction.

(a) The provider may appeal a sanction by requesting an administrative review by the Assistant Director of SPD.

(b) For an appeal to be valid, written notice of the appeal must be received by SPD within 45 days of the date the sanction notice was mailed to the provider.

(c) The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(4) At the discretion of CIIS, providers who have previously been terminated or suspended by any division within DHS may not be re-enrolled as providers of Medicaid services.

Stat. Auth.: ORS 409.050 & 417.345

Stats. Implemented: ORS 430.215, 427.007, 417.340 - 417.355

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08

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Department of Justice
Chapter 137

Rule Caption: Modify OAR to align with HB 2131 and includes revisions that clarifies actions of state agencies.

Adm. Order No.: DOJ 5-2008

Filed with Sec. of State: 3-28-2008

Certified to be Effective: 4-1-08

Notice Publication Date: 3-1-2008

Rules Amended: 137-079-0170, 137-079-0200

Subject: Modify rule to align with HB 2131. Includes revisions that clarify actions of state agencies in their handling of ACP cards as well as removal of redundant language.

Rules Coordinator: Carol Riches—(503) 947-4700

137-079-0170

Responsibility of Public Bodies to Use Substitute Address

(1) Upon certification of a Program participant as described in 137-079-0150(1) and (2), the Program shall notify the Program participant in writing of the requirements of public bodies to use the substitute address and the Program participant's responsibility with regard to requesting that public bodies use the address, pursuant to ORS 192.836(1) and (2).

(2) In addition to the information described in paragraph 1 of this section, the Program shall:

(a) Provide the Program participant with specific information, as such information is available, regarding the use of the substitute address with various public bodies, including information, as available, as to how the

delays in mail receipt caused by participation in the Program may impact the benefits or services provided by public bodies; and

(b) Notify the Program participant that a public body may request a waiver to not use the substitute address, pursuant to ORS 192.836(3) and (4).

(3) When a Program participant submits a current and valid authorization card to a public body as described in ORS 192.836(2), the public body employee creating a new record may make a file photocopy of the authorization card and immediately return the card to the Program participant.

(4) The Program will accept and retain information from Program participants regarding public bodies that refuse to accept the substitute address for the creation of public records or modification of existing records.

Stat. Auth.: ORS 192.860

Stats. Implemented: ORS 192.860 - 192.868

Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07; DOJ 5-2008, f. 3-28-08, cert. ef. 4-1-08

137-079-0200

Disclosure of Information Prohibited – Exceptions

(1) When the Department discloses a Program participant's actual address or telephone number pursuant to a court order issued in accordance with ORS 192.848 1(a), the disclosure shall include in writing the statutory mandate specified in ORS 192.848(2) against re-disclosure of the address or telephone number, except pursuant to a court order. The disclosure may also include any other terms or requirements that will best protect the safety of the Program participant.

(2) The Department shall keep a record of requests for disclosure of a Program participant's actual address or telephone number and of the response to each request.

(3) The Program will accept and retain information from Program participants and from others regarding public bodies that disclose a Program participant's actual address or telephone number in violation of ORS 192.844, 192.848 and these rules.

Stat. Auth.: ORS 192.860

Stats. Implemented: ORS 192.860 - 192.868

Hist.: DOJ 4-2007, f. 4-12-07, cert. ef. 4-16-07; DOJ 5-2008, f. 3-28-08, cert. ef. 4-1-08

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Rule Caption: Procedures for establishment and reopening of paternity and consumer credit reporting.

Adm. Order No.: DOJ 6-2008

Filed with Sec. of State: 4-1-2008

Certified to be Effective: 4-1-08

Notice Publication Date: 2-1-2008

Rules Amended: 137-055-3020, 137-055-3060, 137-055-3080, 137-055-3100, 137-055-3140, 137-055-4560

Subject: OAR 137-055-3020 is amended to delete the definition of "marital presumption." Additionally, the rule is being amended to delete provisions that provided for different processes, depending on when a child was born. A clarification has been added that when the Child Support Program has given notice to a husband and presumptive legal father that the program will proceed against another man that mother has named as the biological father, any objection from the husband must be in writing. OAR 137-055-3060 is amended to remove references to a conclusive presumption of paternity. OAR 137-055-3080 is amended to remove the reference to "legal" paternity under ORS 109.070, as well as making other housekeeping amendments. OAR 137-055-3100 is amended to clarify that the rule does not apply to parties who fail to comply with additional parentage testing unless he or she is the party who requested the additional tests. OAR 137-055-3140 is amended to remove a reference to a conclusive presumption of paternity and to clarify that an application for services may be required. OAR 137-055-4560 is amended to clarify that one of the reasons and obligor may contest credit reporting is that an arrears balance is the result of past support in an order or by an upward modification of an order. Additionally, a clarification has been added to say that a 10-day notice to the obligor or obligee must be given if the person/s credit report will be obtained for the purposes of enforcing a support order.

Rules Coordinator: Vicki Tungate—(503) 986-6086

ADMINISTRATIVE RULES

137-055-3020

Paternity Establishment Procedures

(1) When a case involves a child who is not yet born, the administrator will take no action to establish paternity or to provide locate services until such time as the child is born.

(2) (a) In all cases in which a child was conceived in Oregon, the administrator will initiate legal proceedings to establish paternity under ORS chapter 109 or ORS chapter 416.

(b) Except for proceedings filed under ORS chapter 109, past support will be established as provided by ORS chapter 416 and OAR 137-055-3220.

(3) When the administrator initiates legal action to establish paternity, if the child was born in this state, the administrator will file the Notification of Filing of Petition in Filiation Proceedings with the Center for Health Statistics.

(4) The administrator will seek to establish paternity against the man named by the mother to be the most likely alleged father except as provided in sections (5) and (6).

(5) If the husband and mother are still married and the husband is on the child's birth record:

(a) If only one party disputes paternity, the administrator will give notice to the parties that:

(A) The parties have the right to challenge paternity under ORS 109.070 by filing a petition in the circuit court;

(B) The administrator will delay any initiated support action for 30 days;

(C) If a party provides proof within 30 days that he or she filed a petition, the administrator will suspend the support action pending the outcome of the court's decision.

(D) If no proof is received within 30 days that a party has filed a petition, the administrator will proceed with the legal action to establish support.

(b) If both the husband and mother dispute the child's paternity, the administrator will order the husband, mother and child to appear for parentage testing.

(6) If the husband and mother are still married, no father is listed on the birth record, and the mother names another man as the father of the child, the administrator will provide notice and an opportunity to object to the husband.

(a) If a written objection is received from the husband within 30 days of the date of the notice, an action to establish paternity will be initiated against the husband.

(b) If no written objection is received from the husband within 30 days of the date of the notice, an action to establish paternity will be initiated against the most likely alleged father named in the mother's paternity affidavit.

(7) In all cases in which the mother states that more than one man could be the biological father of the child and parentage tests have excluded a man as the father of the child, the following provisions apply:

(a) If there is only one remaining untested possible biological father, that man is constructively included as the father by virtue of the other man's exclusion as the father.

(b) If there are more than one remaining untested possible biological fathers, the administrator will initiate action against each man, either simultaneously or one at a time, to attempt to obtain parentage tests which either exclude or include the man.

(8) In all cases in which the mother states that more than one man could be the biological father of the child and parentage tests have included a man as the father of the child at a cumulative paternity index of at least 99, any other untested possible father(s) will be considered to be constructively excluded by virtue of the first man's inclusion.

(9)(a) The Child Support Program may initially pay the costs of parentage tests, and will seek reimbursement of those costs, but may agree to waive the costs.

(b) If an alleged father fails to appear as ordered for parentage tests, but the mother and child have appeared, reimbursement will be sought from the alleged father for the costs incurred.

(c) The maximum amount allowed to be entered as a parentage test judgment against a party is the amount the Child Support Program agrees to pay a parentage testing laboratory used to perform the tests.

(d) A judgment for parentage test costs reimbursement will not be sought:

(A) Against a person who has been excluded as a possible father of a subject child;

(B) If the mother stated that more than one man could be the father of the child, and has been unable to name a most likely alleged father, and the man tested has not objected to the entry of an order establishing paternity; or

(C) If the alleged father has applied for services under ORS 25.080 and requested paternity establishment in accordance with OAR 137-055-3080.

(10) A judgment for parentage test costs reimbursement will not be sought against any person found to be the legal father for costs attributable to testing other alleged fathers in any case in which the mother stated that more than one man could be the father of the child.

(11) When a party requests additional parentage testing as provided in ORS 109.252(2), the following provisions apply:

(a) The laboratory selected for additional testing must be a laboratory approved by accreditation bodies designated by the Department of Human Services; and

(b) The party making the request must advance the costs of the additional tests to the accredited laboratory.

(12) Upon receipt of a party's request for additional parentage testing and proof that payment has been advanced to an accredited laboratory, the administrator or the court will order additional testing.

(13) If a non-requesting party fails to appear for the additional parentage testing, the administrator will take appropriate steps to compel obedience to the order for additional testing.

(14) If a requesting party fails to appear for the additional parentage testing, the administrator may enter an order in accordance with OAR 137-055-3100.

(15) The administrator may dismiss or terminate a proceeding to establish paternity after sending written notice to the parties that the case is being considered for dismissal or termination and that any comments or objections must be made within 10 days.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 109.070, 416.340

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1020; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3020; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2008(Temp), f. & cert. ef. 1-2-08 thru 3-31-08; DOJ 6-2008, f. & cert. ef. 4-1-08

137-055-3060

Establishing Paternity in Multiple Alleged Father Cases

(1) In any action to establish paternity initiated under ORS 416.400 to 416.470, when the mother of the child for whom paternity is being established states that the father of the child could be more than one man, the administrator may initiate action against those men who are named by the mother as possible fathers as provided in this rule.

(2)(a) If mother is able to name one of the possible fathers as the most likely father based upon the date of conception, the physical characteristics the child shares with that man, or other factors, the administrator may initiate action against that man only.

(b) If the administrator is unable to locate the man identified by mother as the most likely father, the administrator will not proceed with establishment of paternity until the man is located.

(3) If mother cannot identify one of the men who may be the father as the most likely father, the administrator may gather additional information, including information from the mother and from any physician or other licensed health care provider of obstetrical care to mother, which may assist the mother in identifying the most likely father.

(4) If mother remains unable to identify one of the possible fathers as the most likely father, the administrator may initiate legal action against any one or more possible fathers, as named by the mother, upon whom the administrator can apparently effect personal service based on the information it has available.

(5) The administrator will provide notice to any possible father described in this rule and served in an action to establish paternity that the mother of the child for whom the administrator seeks to establish paternity has named another man or men as a possible father unless that other man (or men) has been excluded by parentage tests.

(6) The administrator will enter no order establishing paternity with respect to a man who has not been named by mother as the most likely father unless the provisions of either subsection (a) or (b) of this section apply.

(a) The man has been subjected to parentage tests which have not excluded him as a possible father of the child in question; or,

(b) All other men named by mother as possible fathers have been excluded as possible fathers by parentage tests.

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(7) Notwithstanding any other provision of this rule, its requirements do not apply when one of the possible fathers is entitled to reasonable notice under ORS 109.096.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 416.400 – ORS 416.470
Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1040; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3060; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2008(Temp), f. & cert. ef. 1-2-08 thru 3-31-08; DOJ 6-2008, f. & cert. ef. 4-1-08

137-055-3080

Responsibility of Administrator to Establish Paternity at Request of Self-Alleged Father

(1) For purposes of this rule, self-alleged father means a man who both:

(a) Claims that he is, or possibly is, the biological father of a child born out of wedlock as defined in ORS 109.124; and

(b) Wishes to have paternity legally established for the child, establishing himself as the legal father.

(2) The administrator is responsible for pursuing establishment of paternity at the request of a self-alleged father, subject to all of the following:

(a) The self-alleged father must either:

(A) Be eligible for services under ORS 25.080, because he is receiving TANF cash assistance or Medicaid assistance for the child born out of wedlock; or

(B) Complete an application for services as provided under ORS 25.080.

(b) Unless otherwise prohibited under this rule, the administrator will:

(A) Take all appropriate steps to determine if the self-alleged father is the biological father; and

(B) Pursue appropriate action to legally establish paternity unless evidence indicates that he is not the biological father.

(c) The administrator will not pursue action to establish paternity under this section in any case where adoption of the child is final or where paternity, as specified in ORS 109.070, has already been established for the child;

(d) The administrator will not pursue action to establish paternity under this rule if the Child Support Program (CSP) Director has determined that such action would not be in the best interests of the child, in accordance with section (5) of this rule.

(3) For purposes of this rule, legal proceedings for adoption of the child are pending if either of the following provisions is true:

(a) The mother or legal guardian of the child has released or surrendered the child to the adoptive parent(s) for adoption, and such release or surrender has become irrevocable because the child has been placed in the physical custody of the adoptive parent(s) and the other conditions of ORS 109.312 have been met;

(b) The mother or legal guardian of the child has released or surrendered the child to the Department of Human Services (DHS) or an incorporated child-caring agency for adoption, and such release or surrender has become irrevocable because the child has been placed by the agency in the physical custody of a person or persons for the purpose of adoption, in accordance with ORS 418.270(4).

(4)(a) When a self-alleged father requests the administrator establish his legal paternity for a child, the administrator will send written notification by first class mail to the last-known address of the mother and (if a separate party) legal guardian of the child. Further, if the administrator knows or is informed that legal proceedings for adoption of the child are pending, the administrator will also send written notification to the licensed private agency handling the adoption, or if none exists, to DHS;

(b) If the mother and (if a separate party) legal guardian cannot readily be found, the enforcing agency administrator will make a diligent attempt to locate the party. A diligent attempt includes but is not limited to submitting the case to the Division of Child Support for state parent locator services. If unable to locate the mother and legal guardian within 30 days, the administrator will proceed to process the case as described in section (8) of this rule without the notice described in this section;

(c) The written notification must state the following:

(A) That the self-alleged father has asked the administrator for establishment of paternity services;

(B) That if legal proceedings for adoption of the child are pending, or if the child's mother (or legal guardian if a separate party) alleges that the child was conceived due to rape or incest, the CSP Director will determine

whether establishing paternity is in the best interests of the child, on the basis of the responses the CSP Director receives to the written notification;

(C) That a copy of any response to the notification the CSP Director receives will be sent to the self-alleged father, and that the self-alleged father will then have an opportunity to respond to the allegations. The administrator will ensure that the address of the mother and/or guardian is deleted from any written material it sends to the self-alleged father;

(D) The factors the CSP Director will consider, set out in section (5) of this rule, in determining whether establishing paternity would be in the best interest of the child;

(E) That the mother, legal guardian, and adoption agency or DHS child welfare program if appropriate under this rule, has 15 days to respond in writing to the written notification;

(F) That the self-alleged father has 15 days to respond to an allegation or response received by the CSP Director;

(G) That if any of the parties listed in paragraph (D) or (E) of this subsection does not respond to the written notice or allegation within 15 days, the CSP Director will make a determination based on the responses received;

(H) That if the CSP Director determines that establishing paternity would not be in the best interests of the child, this decision:

(i) Means only that the administrator will not pursue action to establish paternity; and

(ii) Does not preclude the self-alleged father from pursuing establishment of paternity on his own, without the assistance of the administrator.

(5) In any case where legal proceedings for adoption of the child are pending, or where the child was conceived due to alleged rape or incest, the CSP Director is responsible for determining whether action to establish paternity would be in the best interests of the child.

(a) If the CSP Director determines that action to establish paternity would not be in the best interests of the child, the administrator will take no further action to establish paternity for the self-alleged father;

(b) A signed written statement from the mother or legal guardian of the child, stating that the child was conceived as a result of rape or incest, is sufficient reason for the CSP Director to determine that establishing paternity would not be in the best interests of the child, unless such statement is disputed or denied by the self-alleged father, subject to the following:

(A) If the self-alleged father does not respond to the copy of the allegation or response the CSP Director receives as provided in subsections (4)(a) through (4)(c) of this rule, the CSP Director will make a determination by default based on the mother's or legal guardian's statement;

(B) If the self-alleged father does respond and acknowledges that the child was conceived by rape or incest, the CSP Director must determine that establishing paternity would not be in the best interests of the child;

(C) If the self-alleged father does respond and denies that the child was conceived by rape or incest, the CSP Director will decide whether to pursue action to establish paternity. The CSP Director will consider factors including, but not limited to:

(i) Whether a police report was filed;

(ii) Whether the self-alleged father was convicted or acquitted of rape or incest charges;

(iii) Whether other persons have information that the child was conceived due to rape or incest;

(iv) Any other factors known or provided to the CSP Director that would support or refute the veracity of the rape or incest allegation;

(v) Whether establishing paternity would be in the best interest of the child, considering the factors listed in subsection (c) of this section;

(vi) The CSP Director's decision in this matter is limited to only whether the administrator will pursue action to establish paternity, and is in no way to be construed or intended as a determination or accusation of whether the self-alleged father is in fact guilty or not guilty of rape or incest;

(c) When the CSP Director finds that legal proceedings for adoption of the child are pending, the CSP Director will consider the following factors in determining whether establishing paternity would be in the best interests of the child:

(A) The nature of the relationship or contacts between the child and the self-alleged father. This determination may consider whether the child has lived with the self-alleged father or has had frequent visitation with the self-alleged father, thereby establishing a substantial parent-child relationship;

(B) The degree of parental commitment by the self-alleged father to the child. This determination may consider whether the self-alleged father

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has attempted to stay in contact with the child, and if such attempts would continue or increase in the future;

(C) The degree to which the self-alleged father has contributed or attempted to contribute, consistent with his ability, to the support of the child. This determination may consider the nature and extent of such support, and if such support would continue or increase in the future;

(D) If there is a legal relationship between the child and the self-alleged father, or if there has been an attempt to establish such a legal relationship through filiation proceedings, custody actions, voluntary acknowledgment of paternity, or similar actions. This determination may consider whether the self-alleged father has had an opportunity to establish a legal relationship prior to the initiation of adoption proceedings;

(E) Whether good reasons exist that would excuse the self-alleged father's failure to establish a relationship, or stay in contact with the child, or contribute to the support of the child, or attempt to establish a legal relationship with the child. Such reasons may include, but are not limited to, the self-alleged father's late awareness of the mother's pregnancy or of the child's birth.

(6) Absent judicial review, the decision of the CSP Director is final with regard to any responsibility of the administrator to pursue establishment of paternity.

(7) No provision of this rule prohibits the self-alleged father from pursuing establishing paternity on his own, without the assistance of the administrator.

(8) If the CSP Director determines (when a determination by the CSP Director is necessary under this rule) that the administrator may pursue action to establish paternity at the request of a self-alleged father, or if the administrator does not receive a written assertion requiring such a determination by the CSP Director under this rule, the administrator will proceed on the case as follows:

(a) The administrator will make diligent efforts to provide the mother of the child, unless she is deceased, with actual notice of the action to establish paternity. Notice must be by personal service upon the mother. Diligent efforts include mailing of the notice or petition and summons by first class mail to all reasonably known recent addresses with a request that the mother acknowledge service on the form provided and also mailing the same notice to one or more of the maternal grandparents, if known, addressed to them individually and requesting that they forward the notice and acknowledgment form to the mother;

(b) Notwithstanding the requirement of subsection (a) of this section, no action to establish paternity under this section may be delayed more than 60 days from the self-alleged father's initial request because of the enforcing agency's inability to provide actual notice to the mother of the child or children;

(c) If the mother of the child or children cannot be served with notice of the action or if the mother is deceased, the enforcing agency will not take an order establishing paternity unless parentage tests have been completed which fail to exclude the self-alleged father, and have a cumulative paternity index of at least 99;

(d) In any action to establish paternity in which the administrator cannot serve the child's mother, or when the mother is deceased, the administrator will request that the court appoint a willing, qualified and suitable person to be a guardian ad litem for the child. If no relative or other person agrees to such appointment, the administrator will request that an attorney be appointed for this purpose;

(e) When an order establishing paternity has been taken in accordance with this section without service of the notice or petition and summons on the mother, the administrator will mail a copy of the final order to the mother by first class mail to the most recent addresses of record in the case record, DHS' TANF files and Oregon Driver and Motor Vehicle files marked please forward, address correction requested. In addition to such mailing, the administrator will, for a period of six months from the date of the final order, continue attempts to locate the mother and personally serve her with a copy of the final order establishing paternity.

(9) All other provisions of this rule notwithstanding, the administrator cannot require the child's mother (or other custodial adult) to cooperate with efforts to establish paternity, and the administrator will not assess a penalty for not cooperating, in any case where a finding that the child's mother (or other custodial adult) is exempt from cooperating due to good cause, pursuant to federal law at 42 U.S.C. 654(a)(29) and 42 U.S.C. 666(a)(5)(B)(i), is either currently in effect or is pending. In any such case, the administrator need not proceed further on behalf of the self-alleged father if it determines that there is no further effective action the administrator can take on behalf of the self-alleged father.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.080

Hist.: AFS 23-1993, f. & cert. ef. 10-19-93; AFS 3-1994, f. & cert. ef. 2-1-94; AFS 12-1996, f. & cert. ef. 4-1-96; AFS 9-1998, f. 5-29-98, cert. ef. 6-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0068; AFS 4-2001, f. 3-28-01, cert. ef. 4-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3080; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3080; DOJ 1-2008(Temp), f. & cert. ef. 1-2-08 thru 3-31-08; DOJ 6-2008, f. & cert. ef. 4-1-08

137-055-3100

Order Establishing Paternity for Failure to Comply with an Order for Parentage Testing

(1) In an action to establish paternity initiated pursuant to ORS 416.415, the administrator may serve simultaneously the Notice and Finding of Financial Responsibility and an administrative order for parentage tests.

(2) An administrative order for parentage tests may require either the mother of the child(ren) in question or a person who is a possible father of the child(ren) to file a denial of paternity in order to receive a parentage test, or it may allow testing prior to a party filing a responsive answer to the allegation of paternity.

(3) The administrator will enter an order establishing paternity based upon a party's failure to appear for parentage testing, provided that all parties have been served with a Notice and Finding of Financial Responsibility and with an order requiring parentage tests if:

(a) The mother of the subject child(ren) has named the male party who failed to appear for parentage tests in a sworn statement as a possible father of the child(ren) in question; or

(b) A male party has claimed in a sworn statement to be the father of the child(ren) in question and the mother and her child(ren) have failed to appear for such tests.

(4) An order establishing paternity based on a failure to submit to parentage tests may be entered:

(a) Whether or not a responsive answer has been filed; and

(b) Whether or not corroboration exists to support a sworn statement of a party naming a male party as a father or possible father of the child(ren) in question, provided that the male party has either:

(A) Been named in a sworn statement by the mother as a possible father of the child; or

(B) Has named himself in a sworn statement as the father of the child.

(5) The provisions of this rule do not apply to the additional parentage tests described in OAR 137-055-3020(11) through 137-055-3020(14), unless the party requesting the tests fails to comply with the order for parentage testing.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 109.252 & 416.430

Hist.: AFS 7-1998, f. 3-30-98, cert. ef. 4-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1030; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3100; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3100; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2008(Temp), f. & cert. ef. 1-2-08 thru 3-31-08; DOJ 6-2008, f. & cert. ef. 4-1-08

137-055-3140

Reopening of Paternity Cases

(1) When a party claims that a man established as the father of a child in fact is not the biological father of the child, the administrator will open or reopen the issue of paternity when all of the provisions of subsections (a) through (e) apply:

(a) The administrator initiated the action administratively which established paternity or paternity was established by a signed voluntary acknowledgment in Oregon;

(b) Parentage tests have not been conducted;

(c) The order was entered with the circuit court one year ago or less, or the voluntary acknowledgment as described in ORS 432.287 was filed with the Center for Health Statistics one year ago or less;

(d) The party applying has completed and returned to the administrator a request for reopening and, if required, a signed application for services, prior to expiration of the one year period;

(e) The administrator has jurisdiction over the parties.

(2) If at any point during the process, the administrator obtains information and verifies that the criteria in subsections (1)(a), (b), (d) or (e) are no longer met, the administrator will make a determination and will send the affected parties written notification within 10 days of verifying the information.

(3) The party who requested parentage tests must reimburse the administrator for the costs incurred by the Child Support Program for such tests, unless the male party in question is excluded.

(4) An order establishing paternity will not be vacated, dismissed or set aside under this rule unless parentage tests exclude the male party in question as the father of the child, or a party fails to comply and the issue

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of paternity is resolved against that party. The administrator will not submit for the court's approval, any order granting relief which requires repayment to the debtor of money paid by that debtor under the order.

(5) If a reopening initiated by the administrator results in an order of nonpaternity, the administrator will satisfy any state debt owing on the case and file credit arrears owed to any other party.

(6) Any judgment of nonpaternity under this rule will be by circuit court order.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 416.443, Or Laws 2007, ch 454
Hist.: AFS 29-1995, f. 11-6-95, cert. ef. 11-15-95; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-1000; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3140; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3140; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 1-2008(Temp), f. & cert. ef. 1-2-08 thru 3-31-08; DOJ 6-2008, f. & cert. ef. 4-1-08

137-055-4560

Consumer Credit Reporting Agencies

(1) The Division of Child Support (DCS) may enter into agreements with consumer reporting agencies to disclose information under section (2) of this rule only to an entity that has furnished evidence satisfactory for DCS to determine that the entity is a consumer reporting agency as defined in ORS 25.650. Under these agreements, DCS will provide such agencies with the names of obligors who owe past due support and will indicate the specific amount each obligor owes. Under these agreements, DCS will provide such information:

(a) Whether or not the agency has requested information on any specific obligor; and

(b) On a recurring or periodic basis.

(2) Before issuing a periodic report to a consumer reporting agency with information on any obligor, the DCS will provide the parties with advance notice of the intent to report the obligor's support balance to the consumer reporting agencies. The notice will be sent to the parties' last known addresses. The notice must:

(a) Indicate the balance to be reported to the consumer reporting agencies;

(b) Advise that the current balance will be reported to the consumer reporting agencies on a recurring basis without sending further notice to the parties;

(c) Advise of the obligor's right to contest the action within 30 calendar days of the date of the notice.

(d) Explain the process for contesting and advise that objections must be in writing on the form provided with the notice;

(e) Advise that the only reasons for contesting credit reporting are:

(A) The obligor is not the person who owes the support balance shown on the case record;

(B) The support balance indicated in the notice is incorrect; or

(C) The arrears are a result of past support created in an order under ORS 416.422 or ORS 109.155(4) or by an upward modification of an order.

(3) If the obligor does not contest the action within the allowed 30-day period, DCS will release the information to the consumer reporting agencies.

(4) If the obligor contests the balance indicated in the notice the administrator will conduct an administrative review on the case and mail the results of the review to the parties.

(5) Once the administrative review is complete, DCS will release the information to the consumer reporting agencies except as specified in section (12) of this rule.

(6) Parties may contest the administrator's review and determination as provided in ORS 183.484.

(7) If the obligee or child attending school, contests the balance in the notice, the obligee or child attending school, may initiate an arrears establishment request pursuant to OAR 137-055-3240.

(8) If a court or agency of appropriate jurisdiction determines the balance owing is other than previously reported, DCS will update the consumer reporting agencies with the court's or agency's findings within 10 days after receiving a copy of the final order.

(9) If at any time an obligor contacts DCS in writing to state that the information that has been reported to the consumer reporting agency is incorrect, the administrator must, within 30 days of receiving notification of the dispute:

(a) Provide notice to the consumer reporting agency and the parties that the information is being disputed;

(b) Conduct an administrative review of the case; and

(c) Provide the results of the review to the parties and the consumer reporting agency.

(10) Notwithstanding section (9), the administrator will not conduct an administrative review of the reported information more than once in any calendar year, unless an obligor presents new supporting documentation, to the administrator, that information reported to the consumer reporting agency is incorrect.

(11) When consumer reporting agencies ask DCS for information regarding the balance an obligor owes on a support case, DCS may provide available information after complying with the requirements of sections (1) through (8) of this rule. DCS will not charge the requesting agency a fee for this information.

(12) DCS may refer to the consumer reporting agencies, the name and support balance of all obligors who meet the criteria of sections (1) or (11) of this rule unless:

(a) The obligor pays the support balance in full;

(b) The obligor is found to not be the person who owes the child support balance indicated by the case record; or

(c) The administrator determines that the obligor is not delinquent in the payment of support.

(13) When DCS has made a report to a consumer reporting agency under section (1) of this rule, DCS will promptly notify the consumer reporting agency when the case record shows that the obligor no longer owes past due support.

(14) If paternity has been established and a consumer report is needed for the purpose of establishing, modifying or enforcing a child support order, the administrator may request that a consumer reporting agency provide a report. At least 10 days prior to making a request for such report, the administrator must notify, by certified mail, the obligor or obligee whose report is requested that the report will be requested.

Stat. Auth.: ORS 180.345
Other Auth: 15 USC § 1681b
Stats. Implemented: ORS 25.650
Hist.: AFS 79-1985(Temp), f. & ef. 12-26-85; AFS 22-1986, f. & ef. 3-4-86; AFS 12-1989, f. 3-27-89, cert. ef. 4-1-89, Renumbered from 461-035-0051; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0670; AFS 11-1990, f. 3-27-90, cert. ef. 4-1-90; AFS 25-1990, f. 11-21-90, cert. ef. 12-1-90; AFS 7-1996, f. 2-22-96, cert. ef. 4-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 18-2000, f. & cert. ef. 7-12-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0230; AFS 15-2002, f. 10-30-02, ef. 11-1-02; SSP 15-2003, f. 6-25-03, cert. ef. 6-30-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4560; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4560; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 6-2008, f. & cert. ef. 4-1-08

Department of Oregon State Police, Office of State Fire Marshal Chapter 837

Rule Caption: Change the permit application postmark date from December 1 to December 18.

Adm. Order No.: OSFM 2-2008

Filed with Sec. of State: 4-3-2008

Certified to be Effective: 5-1-08

Notice Publication Date: 4-1-2008

Rules Amended: 837-012-0520

Subject: Amend OAR 837-012-0520, subsection (13), to amend the permit application postmark date from December 1 to December 18 of the year preceding the year for which the wholesale permit is sought.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-012-0520

Wholesale Permit Applications

(1) Any In-State Wholesaler engaged in, or intending to engage in, the sale, provision, or shipment of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, within Oregon, or from Oregon for delivery into another state, shall first apply for and obtain a Wholesale Permit issued by the Office of State Fire Marshal.

(2) Any Out-of-State Wholesaler engaged in, or intending to engage in, the sale, provision, or shipment of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks, in or into Oregon shall first apply for and obtain a Wholesale Permit issued by the Office of State Fire Marshal.

(3) A separate Wholesale Permit shall be applied for and obtained for each Wholesale Site that may conduct Wholesale Operations within, from, or into Oregon.

(4) The application for a Wholesale Permit shall be made on a form provided by the Office of State Fire Marshal.

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(5) All information provided by the applicant on the Permit Application shall be true and correct to the applicant's knowledge.

(6) In addition to completion of the Wholesale Permit application forms, applicants shall submit:

(a) A copy of a current photographic identification card of the applicant(s). The Office of State Fire Marshal shall accept only photo identification issued by the Department of Motor Vehicles in the applicant's state of residency. For purposes of this rule, if the applicant is a corporation, the applicant shall submit copies of photographic identification of all the corporate officers. If the applicant is a partnership, the applicant shall submit copies of the photographic identification of all partners.

(b) A description of the types, pursuant to United States Department of Transportation classification, and the maximum quantities, by total gross weight, of Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks to be stored at the Wholesale Site for which a Wholesale Permit has been applied.

(7) As part of the Permit Application process, the applicant shall obtain the approval of the Local Fire Authority and the local building official prior to submitting their application to the Office of State Fire Marshal.

(8) Exception to 837-012-0520(7). If the applicant's Wholesale Site address was continuous during the year preceding the year for which the Wholesale Permit renewal is sought, the applicant is required only to re-submit to the Office of State Fire Marshal, as part of the Wholesale Permit renewal application, the approval of the Local Fire Authority.

(9) As part of the Permit Application, Wholesale Permit applicants who intend to Sell or provide 1.3G Fireworks shall submit to the Office of State Fire Marshal a copy of their appropriate license issued by BATFE.

(10) Applicants shall submit the completed Permit Application to the Local Fire Authority for review and signature approving the Wholesale Site prior to submission of the Permit Application to the Office of State Fire Marshal.

(11) Permit Applications shall be signed by the applicant(s).

(a) If the applicant is a partnership, the application shall be signed by every partner.

(b) If the applicant is a corporation, the application shall be signed by an officer of the corporation.

(c) If the applicant is an Out-of-State Wholesaler, the application shall be signed by the applicant and the Manager.

(12) Permit Applications shall not be submitted to the Office of State Fire Marshal prior to October 1 of the year preceding the year for which the Wholesale Permit is sought.

(13) Permit Applications shall be postmarked by a United States Postmark, or received at the Office of State Fire Marshal, no later than December 18 of the year preceding the year for which the Wholesale Permit is sought. If December 18 falls on a day when a postmark cannot be obtained, applications shall be postmarked on the preceding business day when a postmark can be obtained. If December 18 falls on a day when the Office of State Fire Marshal is closed, and the applicant wishes to hand deliver their application, it shall be delivered to the Office of State Fire Marshal at the Salem office on the preceding business day. However, due to limited resources in the fireworks program, it is recommended that wholesale fireworks permit applications be postmarked or submitted to the OSFM by December 1 of the year preceding the year for which the permit is sought.

(14) Relocation of the Wholesale Site shall require submission of a new Permit Application and Wholesale Permit fee.

(15) Only one Wholesale Permit shall be applied for or issued for each Wholesale Site.

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented: ORS 480.110-480.165

Hist.: FM 2-1982(Temp), f. & ef. 3-5-82; FM 3-1982(Temp), f. & ef. 4-16-82; FM 3-1985, f. & ef. 4-17-85; FM 1-1986, f. & ef. 1-9-86; FM 6-1986(Temp), f. & ef. 6-10-86; FM 9-1986, f. & ef. 12-10-86; Suspended by FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; Renumbered from 837-012-0120; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 8-2002, f. & cert. ef. 10-4-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 1-2008(Temp), f. & cert. ef. 1-25-08 thru 7-3-08; OSFM 2-2008, f. 4-3-08, cert. ef. 5-1-08

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Rule Caption: Update language in definitions to allow electronic initial documents, and add language clarifying dedicated funding of fees collected.

Adm. Order No.: OSFM 3-2008

Filed with Sec. of State: 4-3-2008

Certified to be Effective: 5-1-08

Notice Publication Date: 4-1-2008

Rules Amended: 837-020-0035, 837-020-0115

Subject: Update language in definitions to allow electronic initial documents, and add language clarifying dedicated funding of fees collected.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-020-0035

Definitions

For purposes of ORS 480.310 to 480.385 and OAR 837-020-0025 through 837-020-0125 only, the following definitions apply:

(1) "Business Use" means that all *Class 1 flammable liquids* dispensed into *motor vehicles* and *containers* must be used only in the course of business activities.

(2) "Class 1 Flammable Liquid" means any liquid with a flash point below 25 degrees Fahrenheit, closed cup tester. Note: Diesel fuel is not a *Class 1 flammable liquid*.

(3) "Container" means all types of portable *containers*.

(4) "Conditional Use Customer" means a *person* who may dispense *Class 1 flammable liquids* at a licensed *conditional nonretail facility*, and meets the requirements of OAR 837-020-0045 through 837-020-0125.

(5) "Conditional Nonretail Facility" means a *nonretail facility* licensed by the State Fire Marshal, where *conditional use customers* may dispense *Class 1 flammable liquids*.

(6) "Dispensing" means the transfer of a *Class 1 flammable liquid* from a *facility* to a *motor vehicle* or *container*.

(7) "Documentation" means a *verifiable* Federal Employer Identification Number or *documentation* that verifies participation in a business or employment with a government agency or nonprofit or charitable organization. *Documentation* may be photocopies or facsimiles of the original documents, or printouts of web site licensing information that shows the business is currently licensed to operate.

(8) "Dual Operations" means a *nonretail facility* where *Class 1 flammable liquids* are dispensed at retail and nonretail with either a time separation of the retail and nonretail operations or a separation of the retail and nonretail pump islands by a distance of at least 50 feet.

(9) "Emergency" means any man-made or natural element or circumstance causing or threatening loss of life, injury to *person* or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, crisis influx of migrants unmanageable by the county, civil disturbance, riot, sabotage and war.

(10) "Emergency Management Agency" means an organization created and authorized under ORS 401.015 to 401.105, 401.260 to 401.325 and 401.355 to 401.580 by the state, county or city to provide for and ensure the conduct and coordination of functions for comprehensive *emergency* program management.

(11) "Emergency Service Agency" means an agency defined in ORS 401.025 or an entity authorized by an *emergency service agency* to provide services during an *emergency*.

(12) "Emergency Service Worker" means an *individual* who, under the direction of an *emergency service agency* or *emergency management agency*, performs *emergency services* and:

(a) Is a registered volunteer or independently volunteers to serve without compensation and is accepted by the office or the *emergency management agency* of a county or city; or

(b) Is a member of the Oregon State Defense Force acting in support of the *emergency service* system.

(13) "Emergency Services" means and includes those activities provided by state and local government agencies with *emergency* operational responsibilities to prepare for and carry out any activity to prevent, minimize, respond to or recover from an *emergency*. These activities include, without limitation, coordination, preparedness planning, training, interagency liaison, fire fighting, oil or hazardous material spill or release cleanup as defined in ORS 466.605, law enforcement, medical, health and sanitation services, engineering and public works, search and rescue activities, warning and public information, damage assessment, administration and fiscal management, and those measures defined as "civil defense" in section 3 of the Act of January 12, 1951, P.L. 81-920 (50 U.S.C. 22520).

(14) "Employee" means an *individual* who works for an *operator* or an *owner*.

(15) "Equivalent Documentation" means *verifiable documentation* that meets or exceeds the requirements of *documentation* required under ORS 480.345. The final decision as to what is acceptable as *equivalent documentation* rests with the State Fire Marshal.

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(16) "Facility" means a site where *Class 1 flammable liquids* are dispensed. A *facility* can be either *retail, non-retail* or a combination of both.

(17) "General Public" means someone other than a *nonretail customer* or a *conditional use customer*.

(18) "Individual" means a single human being.

(19) "License" means the official document issued by the State Fire Marshal that authorizes the operation of a *nonretail facility* or a *conditional nonretail facility* when otherwise in compliance with all applicable requirements of OAR 837-020-0040.

(20) "License Application" means the form and accompanying *documentation* required to be completed and submitted to the State Fire Marshal for approval prior to the issuance of a *nonretail facility* or a *conditional nonretail facility license*.

(21) "May" means a regulation of conduct and implies probability or permission.

(22) "May not" means a prohibition of conduct.

(23) "Motor Vehicle" means a vehicle that is self-propelled or designed for self-propulsion, as defined by Oregon Vehicle Code 801.360.

(24) "Must" means a mandatory requirement.

(25) "Nonretail Customer" means an operating business enterprise, government agency, or nonprofit or charitable organization who otherwise meets the customer requirements of ORS 480.345

(26) "Nonretail Facility" means a *facility* licensed by the State Fire Marshal, where *Class 1 flammable liquids* are dispensed through a fuel dispensing device that limits access to qualified *nonretail customers*.

NOTE: A dual operation facility is also a *nonretail facility*.

(27) "Operator" means a *person* that operates a *nonretail facility* or a *conditional nonretail facility*.

(28) "Oregon Fire Code (OFC)" means the *Oregon Fire Code*, 2007 Edition.

(29) "Owner" means any *person* that is the *owner of a nonretail facility* or a *conditional nonretail facility*. An *owner* may also be an *operator*.

(30) "Person" means one or more *individuals*, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of *persons* and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations.

(31) "Retail Facility" means a *facility* that sells *Class 1 flammable liquids* to the *general public* in compliance with ORS 480.330.

(32) "Verifiable Documentation" means *documentation* that can be verified by the State Fire Marshal as true and accurate.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.310 - 480.385

Hist.: FM 5-1990, f. 7-13-90, cert. ef. 10-15-90; FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1995, f. 10-11-95, cert. ef. 10-16-95; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07; OSFM 4-2007(Temp), f. & cert. ef. 11-30-07 thru 5-27-08; OSFM 3-2008, f. 4-3-08, cert. ef. 5-1-08

837-020-0115

Application, License Renewals, and Annual Fees

(1) Any *owner* or *operator* engaged in, or intending to engage in, the operation of a *nonretail facility* or a *conditional nonretail facility* must apply for and obtain a *license* issued by the State Fire Marshal. The application, fees, and supporting documents for new facilities *must* be submitted and received by the State Fire Marshal 45 days prior to the start of the operation.

(2) A separate *license* *must* be applied for and obtained for each *nonretail facility* or *conditional nonretail facility*.

(3) The *license* *must* be obtained prior to start of the *nonretail facility* or *conditional nonretail facility* operation, or the *owner* or *operator* may be assessed a civil penalty and be subject to closure of the *Nonretail* or *conditional nonretail facility*.

(4) The application fee for each *nonretail facility* and *conditional nonretail facility license* is \$250 per facility. *Licenses* are valid for one year from the date of issue.

(5) In accordance with ORS 183.705, the *license* renewal date of a *facility* may be adjusted or prorated to correspond with existing State Fire Marshal licensing year dates.

(6) *License* fees may be either paid at, or mailed to, the State Fire Marshal. The *license application* may be either delivered to or mailed to the State Fire Marshal.

(7) Payment may be made by personal check, business check, cashier's check or money order made payable to the State Fire Marshal. If the fee is paid by either personal or business check, the State Fire Marshal may not take any action on the *license application* until the check has cleared the bank.

(8) In addition to the application and renewal fees assessed by this section, *owners* or *operators* of *nonretail facilities* and *conditional nonretail facilities* *must* pay to the State Fire Marshal an annual account fee of \$5 for each *nonretail customer* and *conditional use customer* who has access to dispense *Class 1 flammable liquids* at any time during the applicable *license* year.

(9) *License* renewal applications, accompanying *documentation*, and payment *must* be postmarked by a United States Postmark, or received at the Office of State Fire Marshal, no later than 30 days prior to the *license* expiration for a *license* renewal valid for the following *license*. If the 30 days prior to the *license* expiration date falls on a day when a postmark cannot be obtained, the applications *must* be postmarked or received by the Office of State Fire Marshal on the preceding business day.

(10) *License application* renewals postmarked or received after the deadline set forth under subsection (8) of this rule may be subject to a civil penalty.

(11) License and customer fees received by the Office of State Fire Marshal are deposited with the State Treasurer, placed in the State Fire Marshal Fund, and used to fund the non-retail fuel dispensing program.

Stat. Auth.: ORS 480.380

Stats. Implemented: ORS 480.350 & 480.355

Hist.: FM 4-1991(Temp), f. 12-31-91, cert. ef. 1-1-92; FM 3-1992(Temp), f. & cert. ef. 4-24-92; FM 4-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 1-2002, f. & cert. ef. 2-25-02; OSFM 6-2005, f. 5-24-05, cert. ef. 5-26-05; OSFM 1-2007, f. 3-30-07, cert. ef. 4-1-07; OSFM 4-2007(Temp), f. & cert. ef. 11-30-07 thru 5-27-08; OSFM 3-2008, f. 4-3-08, cert. ef. 5-1-08

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Department of Public Safety Standards and Training Chapter 259

Rule Caption: Adopt Contested Case Hearing Notice Process.

Adm. Order No.: DPSST 4-2008

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 4-15-08

Notice Publication Date: 2-1-2008

Rules Amended: 259-008-0010

Rules Repealed: 259-008-0010(T)

Subject: Establishes a contested case hearing process if the Board denies a request of any physical requirement set forth in OAR 259-008-0010

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-008-0010

Minimum Standards for Employment as a Law Enforcement Officer

(1) Citizenship.

(a) A person may not be employed as a corrections officer for more than one year unless the person is a citizen of the United States.

(b) A person may not be employed as a police or parole and probation officer for more than 18 months unless the person is a citizen of the United States.

(2) Age. No law enforcement unit in this state shall employ as a police officer, corrections officer or parole and probation officer, any person who has not yet attained the age of 21 years.

(3) Fingerprints. On or within 90 days prior to the date of employment, each police, corrections, or parole and probation officer shall be fingerprinted on standard applicant fingerprint cards. The hiring agency is responsible for fingerprinting and shall forward two (2) cards to the Oregon State Police Identification Services Section for processing and assignment of identification number.

(a) Applicant's fingerprints will be retained and kept on file with the Oregon State Police Identification Services Section.

(b) The Oregon State Police Identification Services Section will notify the Department and the employing agency of any criminal record disclosed through processing the applicant's fingerprint card.

(c) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section the Department shall comply with the most current requirements.

(d) If the fingerprint clearance has not been obtained prior to submission of the application for certification, a criminal history affidavit provided by the Department shall be completed and returned to the Department by the applicant pending fingerprint clearance.

(4) Criminal Records. No police, corrections, or parole and probation officer shall have been convicted:

(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one (1) year may be imposed;

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(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(5) Notification of Conviction:

(a) A law enforcement officer, instructor, telecommunicator, or EMD who is convicted of a crime, as identified in OAR 259-008-0070, while employed by a public or private safety agency must notify the agency head within 72 hours of the conviction.

(b) When an agency receives notification of a conviction from its employee, or another source, they must notify the Department within five (5) business days. The notification to the Department must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of the conviction.

(6) Moral Fitness (Moral Character). All law enforcement officers must be of good moral fitness.

(a) For purposes of this standard, lack of good moral fitness means conduct not restricted to those acts that reflect moral turpitude but rather extending to acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation.

(b) The following are indicators of a lack of good moral fitness:

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) Intentional deception or fraud or attempted deception or fraud in any application, examination, or other document for securing certification or eligibility for certification;

(D) Conduct that is prejudicial to the administration of justice;

(E) Conduct that adversely reflects on his or her fitness to perform as a law enforcement officer. Examples include but are not limited to: Intoxication while on duty, untruthfulness, unauthorized absences from duty not involving extenuating circumstances, or a history of personal habits off the job which would affect the officer's performance on the job which makes the officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the officer's ability to perform competently.

(c) If reliable evidence is received by the Board or Department that a law enforcement officer lacks good moral fitness, a rebuttable presumption will be raised that the law enforcement officer does not possess the requisite moral fitness to be a law enforcement officer. The burden shall be upon the law enforcement officer to prove good moral fitness.

(7) Education:

(a) Applicants for the position of a law enforcement officer will be required to furnish documentary evidence of one of the following:

(A) High School diploma; or

(B) Successful completion of the General Educational Development (GED) Test.

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

(b) Evidence of the above shall consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

(c) Reading and Writing Standard. Before beginning basic police training, challenging basic police training, or beginning the police career officer development course, each applicant shall provide evidence to DPSST that the applicant has attained a minimum of a 12th grade reading and writing level in the English language.

(A) The hiring agency is responsible for administering a reading and writing instrument, approved by DPSST, and shall forward the results to DPSST on an application for training (Form F-5) prior to the applicant being admitted to basic police training.

(B) Individuals submitting transcripts verifying that they possess at least a four-year academic degree from an institution recognized by DPSST under the provisions of OAR 259-008-0045 are exempt from completing the 12th grade reading/writing test prior to attending a course identified in this section.

(8) Physical Examination. All law enforcement officers and applicants must be examined by a licensed physician or surgeon.

(a) The medical examination shall be completed not more than 180 days prior to initial offer of employment, nor more than 90 days after initial offer of employment, and shall conform to applicable standards of the Americans with Disabilities Act (ADA). Title 42 USC 12101.

(b) Individuals who have had a successfully completed physical examination (while at the same employer) and are selected for a certifiable position in a discipline in which the individual is not yet certified must complete and pass a new physical examination.

(c) The Department will not require a new physical examination when a law enforcement officer obtains employment, or re-employment, in the same discipline if the officer:

(A) Has had a successfully completed a physical examination, and

(B) Is currently certified; or

(C) Is an officer currently employed full-time in another jurisdiction who has successfully completed a comparable physical examination in that jurisdiction.

(d) Notwithstanding subsection (c), a medical examination may be required by a hiring agency at its discretion.

(e) Police, Corrections, and Parole and Probation applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision must be at least 20/30 (Snellen) in each eye. Due to the demonstrated likelihood of dislodgment or breakage, candidates who are able to wear only glasses with frames must meet an uncorrected standard not worse than 20/100 (Snellen) in each eye. Those candidates who use soft contact lenses (SCLs) must have vision correctable to at least 20/30 in each eye, with no uncorrected standard, provided the employing agency will monitor compliance. Replacement glasses or lenses (as appropriate) must be on the person or readily available at all times during each work shift.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST.

(C) Depth Perception. Depth Perception must be sufficient to demonstrate stereopsis adequate to perform the essential tasks of the job. The recommended test is the Random Stereo Test with 60 seconds of arc.

(D) Peripheral Vision. Visual Field Performance must be 140 degrees in the horizontal meridian combined.

(E) Night Blindness. A history of night blindness should be evaluated to determine applicant's capacity to perform essential tasks at night or in dark or low light settings.

(f) Applicants for the position of police or corrections officer must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 25 decibels (db) at the 500, 1,000, 2,000 and 3,000-Hertz levels in either ear with no single loss in excess of 40 db.

(g) Applicants for the position of parole and probation officer must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must have no average loss greater than 35 decibels (db) at the 500, 1000, 2000, and 3000 Hertz levels in either ear with no single loss in excess of 45 db.

(h) If amplification device(s) is (are) necessary to meet the criteria in (f) or (g) above, or if applicant cannot meet the above criteria and wishes to pursue application, applicant must:

(A) Obtain a hearing evaluation by a licensed audiologist or otorhinolaryngologist (ear, nose, throat) to determine current hearing aid requirement; and

(B) Achieve a Speech Reception Threshold (SRT) of no greater than 25 db for each ear;

(C) Police, corrections and parole and probation officers must achieve a Speech Discrimination test score of no less than 90% utilizing a standard 50-word presentation at 60 db Hearing Threshold Level (HTL). The Department may require an applicant to have another examination by a licensed audiologist or otorhinolaryngologist (ear, nose, and throat) designated by the Department to verify that the applicant's hearing meets the Board's minimum hearing standard. The verification examination will be at the expense of the applicant or the applicant's employing agency. The equipment utilized for all of these evaluations must be calibrated annually using current ANSI standards.

(D) Hearing amplification devices used to meet the hearing standard must be the type that protects the applicant from further hearing degradation due to amplification of loud sounds.

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(i) Applicants for the position of police, corrections, or parole and probation officer must be able to use vocal chords and have significant speaking ability to perform speaking-related essential tasks. For police and corrections officers abnormalities of the nose, throat or mouth must not interfere with the applicant's breathing or proper fitting of gas mask or similar device.

(j) Applicants for the position of police, corrections, or parole and probation officer who have a history of organic cardio-vascular disease or a finding during the medical examination of organic cardio-vascular disease will necessitate further medical evaluation.

(A) Resting blood pressure must be less than or equal to 140 mmHg systolic and 90 mmHg diastolic on three successive readings.

(B) Applicants must not have a functional and therapeutic cardiac classification greater than the Heart Association's Class A.

(C) Failure to meet guidelines (j), (A) and (B) will require further medical evaluation.

(D) If the applicant has controlled hypertension not exceeding the above standards and is on medication with side effect profiles, which do not interfere with performance of duty, then the condition may not be excludable.

(E) Functional Capacity I patients with cardiac disease may not be excludable, if they have no limitations of physical activity and ordinary physical activity does not cause discomfort and they do not have symptoms of cardiac insufficiency, nor experience angina pain.

(F) Therapeutic Classification A patients with cardiac disease, whose physical activity is restricted, should be evaluated thoroughly.

(G) If further medical examination is required under (j), it will be at the expense of the applicant or hiring authority.

(k) All law enforcement applicants must submit a current-version DPSST Medical Examination Report (DPSST Form F2), or a medical report completed by a licensed physician containing at a minimum the information on Form F2 and a signed statement by the examining physician that the applicant does not have any condition, physical, mental, or emotional, which, in his/her opinion, suggests further examination. This Report will be furnished to the examining physician by the hiring agency. The physician must indicate that the applicant is or is not physically able to perform the duties of a law enforcement officer as prescribed by DPSST.

(l) A copy of the Medical Examination Report must be sent to the Department prior to acceptance into a basic course, or any course where such report is required by the Department.

(m) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of the Department's choice at the expense of the applicant or the hiring authority.

(n) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of an officer's duties, including the protection of the public and the safety of co-workers. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(o) A person or department head requesting a waiver of any physical requirement set forth in section (8) of this rule shall submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. The supporting documents must include information pertinent to the waiver request. The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed. Any expense associated with providing documentation or testimony will be borne by the person requesting the waiver or the requesting agency. If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver will be considered void.

(A) If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

(B) If the Board denies a request for a waiver of any physical requirement set forth in section (8) of this rule, the Department will issue Notice and proceed as provided in section (9) of this rule.

(9) Contested Case Hearing Process for denial of waiver.

(a) Initiation of Proceedings: Upon determination that the reason for denial of a waiver is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(b) Contested Case Notice: The "Contested Case Notice" will be prepared in accordance with the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department will have a copy of the notice served on the public safety professional or individual.

(c) Response Time: A party who has been served with a "Contested Case Notice" has 60 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(d) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying the requested waiver.

(e) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Office of Administrative Hearings.

(f) Proposed Order: The assigned Administrative Law Judge will prepare Findings of Fact, Conclusions of Law and Proposed Final Order and serve a copy on the Department and on each party.

(g) Exceptions and Arguments: A party must file specific written exceptions and arguments with the Department no later than 14 days from date of service of the Findings of Fact, Conclusions of Law, and Proposed Final Order.

(A) The Department may extend the time within which the exceptions and arguments must be filed upon a showing of good cause.

(B) When the exceptions and arguments are filed, the party making the exceptions and arguments must serve a copy on all parties of record in the case and provide the Department with proof of service. A failure to serve copies and provide proof of service will invalidate the filing of exceptions and arguments as being untimely, and the Department may disregard the filing in making a final determination of the case.

(h) Final Order: The Department will issue a final order if a public safety professional or individual fails to file exceptions and arguments in a timely manner.

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

Stat. Auth.: ORS 181.640, 181.644, 183.341

Stats. Implemented: ORS 181.640, 181.644, 183.341

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; PS 1-1987, f. & ef. 10-26-87; Renumbered from 259-010-0015, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 4-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 9-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 3-2001, f. & cert. ef. 8-22-01; BPSST 12-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; BPSST 5-2002(Temp), f. 4-3-02, cert. ef. 4-6-02 thru 8-1-02; BPSST 16-2002, f. & cert. ef. 7-5-2002; BPSST 20-2002, f. & cert. ef. 11-21-02; DPSST 3-2003, f. & cert. ef. 1-22-03; DPSST 6-2003, f. & cert. ef. 4-11-03; DPSST 8-2003, f. & cert. ef. 4-18-03; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 3-2006, f. & cert. ef. 2-28-06; DPSST 12-2006, f. & cert. ef. 10-13-06; DPSST 10-2007, f. & cert. ef. 10-15-07; DPSST 13-2007(Temp), f. & cert. ef. 11-1-07 thru 4-18-08; DPSST 1-2008(Temp), f. & cert. ef. 1-15-08 thru 4-18-08; DPSST 4-2008, f. & cert. ef. 4-15-08

Rule Caption: Adopt Contested Case Hearing Notice and Process for Telecommunicators.

Adm. Order No.: DPSST 5-2008

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 4-15-08

Notice Publication Date: 3-1-2008

Rules Amended: 259-008-0011

Subject: Establishes a contested case hearing process if the Board denies a request for a waiver of any physical requirement set forth in OAR 259-008-0011.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-008-0011

Minimum Standards for Employment as a Telecommunicator and Emergency Medical Dispatcher

(1) On or before the date of employment, each telecommunicator and emergency medical dispatcher shall be fingerprinted on standard applicant fingerprint cards.

(a) The hiring agency, if a public agency, is responsible for fingerprinting and shall forward two (2) cards to the Oregon State Police Identification Services Section for processing and assignment of identification number.

(b) If the hiring agency is a private agency it is responsible for fingerprinting and shall forward two (2) cards to the Department along with the appropriate fee.

(A) Applicant's fingerprints will be retained and kept on file with the Oregon State Police Identification Services Section.

(B) The Oregon State Police Identification Services Section shall notify the Department and the employing agency of any criminal record disclosed through processing the applicant's fingerprint card.

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(C) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department shall comply with the most current requirements.

(D) If the fingerprint clearance has not been obtained prior to submission of the application for certification, a criminal history affidavit provided by the Department shall be completed and returned to the Department by the applicant pending fingerprint clearance.

(2) Criminal Records. No telecommunicator or emergency medical dispatcher shall have been convicted:

(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one (1) year may be imposed;

(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(3) Moral Fitness (Moral Character). All telecommunicators and emergency medical dispatchers must be of good moral fitness.

(a) For purposes of this standard, lack of good moral fitness means conduct not restricted to those acts that reflect moral turpitude but rather extending to acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation.

(b) The following are indicators of a lack of good moral fitness:

(A) Illegal conduct involving moral turpitude;

(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation;

(C) Intentional deception or fraud or attempted deception or fraud in any application, examination, or other document for securing certification or eligibility for certification;

(D) Conduct that is prejudicial to the administration of justice;

(E) Conduct that adversely reflects on his or her fitness to perform as a telecommunicator or emergency medical dispatcher. Examples include but are not limited to: Intoxication while on duty, untruthfulness, unauthorized absences from duty not involving extenuating circumstances, or a history of personal habits off the job which would affect the telecommunicator or emergency medical dispatcher's performance on the job which makes the telecommunicator or emergency medical dispatcher both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the telecommunicator or emergency medical dispatcher's ability to perform competently.

(c) If reliable evidence is received by the Board or Department that a telecommunicator or emergency medical dispatcher lacks good moral fitness, a rebuttable presumption will be raised that the telecommunicator or emergency medical dispatcher does not possess the requisite moral fitness to be a telecommunicator or emergency medical dispatcher. The burden shall be upon the telecommunicator or emergency medical dispatcher to prove good moral fitness.

(4) Education:

(a) Applicants for the position of a telecommunicator or emergency medical dispatcher will be required to furnish documentary evidence of one of the following:

(A) High School diploma; or

(B) Successful completion of the General Educational Development (GED) Test.

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

(b) Evidence of the above shall consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

(5) Reading and Writing Standard. Before beginning basic telecommunicator or Emergency Medical Dispatcher (EMD) training or challenging basic telecommunicator training, each applicant shall provide evidence to DPSST that the applicant has attained a minimum of a 12th grade reading and writing level in the English language.

(A) The hiring agency is responsible for administering a reading and writing instrument, approved by DPSST, and shall forward the results to DPSST on an application for training (Form F-5) prior to the applicant being admitted to basic telecommunicator or EMD training.

(B) Individuals submitting transcripts verifying that they possess at least a four-year academic degree from an institution recognized by DPSST under the provisions of OAR 259-008-0045 are exempt from completing the 12th grade reading/writing test prior to attending a course identified in this section.

(6) Physical Examination. All Telecommunicators and Emergency Medical Dispatcher applicants must be examined by a licensed physician.

(a) The medical examination must be completed not more than 180 days prior to initial offer of employment, nor more than 90 days after initial offer of employment, and must conform to applicable standards of the Americans with Disabilities Act (ADA). Title 42 USC 12101.

(b) Individuals who have had a successfully completed physical examination (while at the same employer) and are selected for a certifiable position in a discipline in which the individual is not yet certified must complete and pass a new physical examination.

(c) The Department will not require a new physical examination when a Telecommunicator or Emergency Medical Dispatcher obtains employment, or re-employment, in the same discipline if the Telecommunicator or Emergency Medical Dispatcher:

(A) Has had a successfully completed a physical examination, and

(B) Is currently certified; or

(C) Is currently employed full-time in another jurisdiction and has successfully completed a comparable physical examination in that jurisdiction.

(d) Notwithstanding subsection (c), a medical examination may be required by a hiring agency at its discretion.

(e) Telecommunicator and Emergency Medical Dispatcher applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision must be at least 20/30 (Snellen) when tested using both eyes together.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST. The results of the field test and the methods for testing must be maintained by the employing agency.

(i) Any employing agency that conducts a field test to meet the color vision standard must also complete a Department approved affidavit attesting that the applicant can either correctly discriminate colors or is able to successfully perform the required tasks of a Telecommunicator or Emergency Medical Dispatcher, notwithstanding the applicant's inability to correctly discriminate colors.

(ii) Any affidavit required by (i), that the Department receives and accepts, is non-transferable to any subsequent employer and may not be used by any other entity for certification purposes.

(iii) Notwithstanding subsection (c) of this rule, each employer must complete an agency-specific field test and a Department approved affidavit as described in subsection (i) of this section for any Telecommunicator or Emergency Medical Dispatcher who previously met the color vision standard by completing a field test.

(C) Peripheral Vision. Visual Field Performance must be 120 degrees in the horizontal meridian combined.

(f) Applicants for the position of Telecommunicator or Emergency Medical Dispatcher must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must meet National Emergency Number Association (NENA) hearing standard 54-002 (June 10, 2006).

(g) Applicants for the position of Telecommunicator or Emergency Medical Dispatcher must be able to use vocal cords and have significant speaking ability to perform speaking-related essential tasks.

(7) If further medical examination is required, it will be at the expense of the applicant or the hiring authority.

(8) All Telecommunicator and Emergency Medical Dispatcher applicants must submit a current-version DPSST Medical Examination Report for Telecommunicators and Emergency Medical Dispatchers (DPSST Form F-2T), or a medical report completed by a licensed physician containing at a minimum the information on Form F-2T. This Report will be furnished to the examining physician by the hiring agency.

(9) A copy of the Medical Examination Report must be sent to the Department prior to acceptance into a basic course, or any course where such report is required by the Department.

(10) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of

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the Department's choice at the expense of the applicant or the hiring authority.

(11) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of a Telecommunicator or Emergency Medical Dispatcher's duties. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(12) A person or department head requesting a waiver of any physical requirement set forth in section (11) of this rule must submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. The supporting documents must include information pertinent to the waiver request. The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed. Any expense associated with providing documentation or testimony will be borne by the person requesting the waiver or the requesting agency. If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver will be considered void.

(A) If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

(B) If the Board denies a request for a waiver of any physical requirement set forth in section (8) of this rule, the Department will issue Notice and proceed as provided in section (9) of this rule.

(9) Contested Case Hearing Process for denial of waiver.

(a) Initiation of Proceedings: Upon determination that the reason for denial of a waiver is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(b) Contested Case Notice: The "Contested Case Notice" will be prepared in accordance with the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department will have a copy of the notice served on the public safety professional or individual.

(c) Response Time: A party who has been served with a "Contested Case Notice" has 60 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(d) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying the requested waiver.

(e) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Office of Administrative Hearings.

(f) Proposed Order: The assigned Administrative Law Judge will prepare Findings of Fact, Conclusions of Law and Proposed Final Order and serve a copy on the Department and on each party.

(g) Exceptions and Arguments: A party must file specific written exceptions and arguments with the Department no later than 14 days from date of service of the Findings of Fact, Conclusions of Law, and Proposed Final Order.

(A) The Department may extend the time within which the exceptions and arguments must be filed upon a showing of good cause.

(B) When the exceptions and arguments are filed, the party making the exceptions and arguments must serve a copy on all parties of record in the case and provide the Department with proof of service. A failure to serve copies and provide proof of service will invalidate the filing of exceptions and arguments as being untimely, and the Department may disregard the filing in making a final determination of the case.

(h) Final Order: The Department will issue a final order if a public safety professional or individual fails to file exceptions and arguments in a timely manner.

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

Stat. Auth.: ORS 181.640, 181.644, 183.341

Stats. Implemented: ORS 181.640, 181.644, 183.341

Hist.: BPSST 1-2002, f. & cert. ef. 2-6-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 10-2007, f. & cert. ef. 10-15-07; DPSST 5-2008, f. & cert. ef. 4-15-08

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Rule Caption: Revise rules relating to private security services, private investigators, instructors and credit card payments.

Adm. Order No.: DPSST 6-2008

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 4-15-08

Notice Publication Date: 3-1-2008

Rules Amended: 259-060-0010, 259-060-0060, 259-060-0120, 259-060-0130, 259-060-0135, 259-060-0450, 259-060-0500, 259-061-0015

Subject: Amends rule relating to eight-hour basic classroom instruction;

Allows private security and private investigator sections to make payments by credit card rather than certified check, bank draft, cashier's check or postal money order;

Amends rule relating to certification of private security instructors regarding refresher training requirements and clarifies "military police" experience rather than military experience.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-060-0010

Definitions

(1) "Accreditation Program Manager" means a person who is designated as the administrator of an employer accredited training program and is primary liaison with the Department.

(2) "Alarm Monitor" means a private security professional who remotely detects and reports conditions listed in ORS 181.870(8) to law enforcement agencies in Oregon.

(3) "Armed Private Security Professional" means a private security professional who is in possession of a firearm at any time while performing duties as a private security professional.

(4) "Assessment module" means a four-hour curriculum given to private security professionals that includes, but is not limited to, the demonstration of task-related skills learned in the eight-hour basic classroom instruction as applied to hypothetical situations.

(5) "Board" means the Board on Public Safety Standards and Training.

(6) "Certification" means recognition by the Department that a private security professional or instructor, meets all the qualifications listed in ORS 181.875 and the rules set forth in this Division.

(7) "Certified Private Security Instructor" and "instructor" as used in ORS 181.878, means recognition by the Department that a person meets the minimum qualifications as specified in OAR 259-060-0135.

(8) "Certified Private Security Firearms Instructor" means recognition by the Department that a person meets the minimum qualifications of a private security firearms instructor as specified in OAR 259-060-0135.

(9) "Conviction" or "Convicted" means a finding of guilt in a court of competent jurisdiction by a plea, a jury verdict or a determination by a judge sitting as a trier of fact at a trial. Conviction does not require a final judgment or sentence. A person will not be considered to have been convicted of an offense for purposes of these rules if the conviction is an offense for which the person has been pardoned. A person will also not be considered to have been convicted of an offense for purposes of these rules if the conviction has been expunged or set aside pursuant to the laws of any jurisdiction other than Oregon, provided, however, that the same offense, if committed in Oregon, would have been expunged or set aside pursuant to ORS 137.225. A person will not be considered convicted of an offense committed in Oregon if the conviction has been set aside and the records of arrest and conviction have been ordered sealed pursuant to ORS 137.225.

(10) "Denial" or "Deny" is that action taken by the Department in refusing to issue a license or certificate to an applicant who has not satisfied all requirements for issuance of a license or certificate.

(11) "Department" means the Department of Public Safety Standards and Training.

(12) "Director" means the Director of the Department of Public Safety Standards and Training.

(13) "Direct supervision of new hire" means actively monitoring the work of a new hire by the ongoing and uninterrupted presence of a certified private security professional, or a licensed executive or supervisory manager. The person being monitored may not make decisions regarding any course of action independent of the person providing the direct supervision.

(14) "Employer" means an individual or entity who employs persons to provide private security services.

(15) "Executive Manager" means an individual who has the authority to act on behalf of the company or business in matters of licensure and certification, and whose primary responsibility is the management of certified private security professionals, including any supervisory managers. An executive manager has authority to issue Temporary Work Permits and has ultimate responsibility for compliance with ORS 181.870-181.991.

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(16) "Instructor" means any person who has been certified by the department as meeting the requirements to provide instruction to private security providers or applicants.

(17) "License" means recognition by the Department that an employer, contractor, executive manager or supervisory manager meets the requirements adopted by the Board on Public Safety Standards and Training as necessary to provide private security services.

(18) "Policy Committee" means the Private Security Policy Committee created by ORS 181.889.

(19) "Primary responsibility" means an activity that is fundamental to, and required or expected in, the regular course of employment and is not merely incidental to employment.

(20) "Private" as used in ORS 181.870-181.887 means those activities intended for, or restricted to, the use of a particular person, group or interest; or belonging to or concerning an individual person, company or interest.

(21) "Private security professional" means an individual who performs, as the individual's primary responsibility, private security services for consideration, regardless of whether the individual, while performing the private security services, is armed or unarmed or wears a uniform or plain clothes, and regardless of whether the individual is employed part-time or full-time to perform private security services.

(22) "Private security provider" means any individual who performs the functions of a private security professional, executive manager, supervisory manager or instructor.

(23) "Private security services" means the performance of at least one of the following activities:

(a) The observation and reporting of any unlawful activity.

(b) The prevention of theft or misappropriation of any goods, money or other items of value.

(c) The protection of individuals or property, including, but not limited to, proprietary information, from harm or misappropriation.

(d) The control of access to premises being protected.

(e) The secure movement of prisoners.

(f) The taking of enforcement action by detaining persons or placing persons under arrest under ORS 133.225.

(g) Providing canine services for guarding premises or for the detection of unlawful devices or substances.

(24) "Revocation" or "Revoke" is that action taken by the Department after the licensee or certificate holder has had an opportunity for a hearing and the evidence supports allegations that the licensee or certificate holder has violated provisions of these administrative rules resulting in a Department order concluding that the licensee or certificate holder should not be allowed to continue to provide or implement security services.

(25) "Supervisory manager" means an employee of or a person supervised by an executive manager who has as a primary responsibility the supervision of certified private security professionals.

(26) "Suspension" or "Suspend" is that action taken by the Department in temporarily depriving the holder of a license or certificate that authorizes provision or implementation of private security services.

(27) "Temporary work permit" or Form PS-20 means a form issued by the employer to allow a company to employ and deploy a private security professional, executive or supervisory manager while the application for certification or licensure is being processed. A temporary work permit will not be issued for armed security applicants.

Stat. Auth.: ORS 181.870 & 181.878

Stats. Implemented: ORS 181.870 & 181.878

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. & cert. ef. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 11-2005, f. & cert. ef. 10-14-05; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 4-2007, f. & cert. ef. 2-15-07; DPSST 11-2007, f. & cert. ef. 10-15-07; DPSST 6-2008, f. & cert. ef. 4-15-08

259-060-0060

Eight-Hour Basic Classroom Instruction

(1) The training requirements for certification as a private security provider are:

(a) Eight hours of basic classroom instruction based upon a curriculum approved by the Board or its designated staff. For purposes of these rules, classroom instruction includes use of a subject matter expert, audio, visual and actual classroom instruction. Private security managers and instructors must utilize a management-specific training manual approved by the Board or designated staff, and review the training in a self-study environment. Any manager who provides private security services in the

capacity of a private security professional must complete the full training designated for that classification (e.g., unarmed, armed or alarm monitor).

(b) An applicant may challenge the eight-hour basic classroom instruction component of the training requirements, if the person has two or more years of experience in the field of law enforcement, military police or private security. The person may challenge the eight-hour basic classroom instruction component only once. The four-hour assessment module may not be challenged.

(c) Four hours of additional assessment by a DPSST-certified instructor as detailed in OAR 259-060-0075. Managers and instructors will complete a four-hour management-specific orientation under the direction of the Department's designee, rather than a certified private security instructor.

(d) Successful completion of a written examination administered in compliance with OAR 259-060-0065. Managers and instructors will complete the written examination utilizing the management-specific training manual provided as a resource by the Department. The written examination will be reviewed at the manager's or instructor's four-hour orientation for grading by the Department's designee.

(2) All required training must be conducted by a certified private security instructor as defined by OAR 259-060-0135 or Department designee. Only a certified private security instructor or Department designee may sign a Form PS-6 (Affidavit of Instructor and Private Security Provider Testing Results).

(3) It is the responsibility of the applicant to obtain a completed Form PS-6 sealed in an approved tamper-proof bag and to submit this sealed bag to the Department, along with the completed application packet and fees. The instructor must provide to the applicant the fully-completed original Form PS-6, sealed in a tamper-proof bag, if the applicant successfully completed all requirements. Additionally, the instructor must provide the applicant with a Form PS-6 colored carbon copy, and the instructor will retain the other carbon copy in the instructor's files for the life of the training (two years).

(4) The Department or its designated staff may cause inspections of training methods, instructors and accredited training programs to be made pursuant to ORS 181.878(4)(b), 181.878(6), and OAR 259-060-0135(6).

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

Stat. Auth.: ORS 181.878 & 181.883

Stats. Implemented: ORS 181.878

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. & cert. ef. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 4-2007, f. & cert. ef. 2-15-07; DPSST 6-2008, f. & cert. ef. 4-15-08

259-060-0120

Private Security Professional Certification

(1) Under ORS 181.873(1)(a), it is unlawful for a person to engage in the business of, or perform any service as, a private security professional, or to offer services in such capacity, unless the person has obtained certification as a professional, in accordance with these rules.

(a) A Department-licensed executive manager may temporarily assign a person who is not certified as required by these rules to perform private security services within this state for a period of time not to exceed 90 days if:

(A) The person is employed in another state;

(B) The person holds a private security professional certification or licensure from another state; and

(C) The certification or licensing standards of the other state meet or exceed the standards of this state.

(D) The intent of this provision is to allow a company to transfer its employees to this state for the purpose of temporary assignment.

(E) A Department-licensed executive manager must provide to DPSST a copy of the authorizing state's statutory requirements for private security professionals, demonstrating that the professional has undergone a criminal history fingerprint background check. Additionally, the executive manager must complete Form PS-9 (Private Security Waiver for Reciprocity), a triplicate form; the original must be mailed to the Department or its designated staff, one copy must be retained by the employer, and one copy must be retained by the employee. The employee copy of this form must be carried on the employee's person at all times while performing private security services in this state or while on duty. It must be presented to any law enforcement officer upon demand and must be displayed to any other person upon reasonable request.

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(F) The reciprocity packet must bear a postmark on or before the first day the applicant performs private security services in this state.

(b) A Department-licensed executive manager or supervisory manager who has completed the manager specific orientation requirement of OAR 259-060-0075 may temporarily assign a person, whose application for certification as a private security professional is being processed, to perform private security services within this state for a period of time not to exceed 120 days under the following conditions:

(A) The applicant has completed all the requirements under this section (OAR 259-060-0120), including training;

(B) A Department-licensed manager has completed and signed the applicable portions of Form PS-20 (Private Security Temporary Work Permit), affirming the above requirements have been met;

(C) The Department-licensed executive manager or supervisory manager has attached the original of Form PS-20 to Form PS-1 (Application for Licensure or Certification of Private Security Services Provider); and

(D) The Department-licensed manager has mailed to the Department each of the items in this section, as a complete packet. Form PS-4 is a sworn statement and must be sealed in a tamper-proof bag, along with the fingerprint cards, by the person rolling the prints; Form PS-6 is a sworn statement, and must be sealed in a tamper-proof bag by the issuing instructor. The application packet must bear a postmark on or before the first day the applicant performs private security services. Form PS-27 (Private Security Code of Ethics) is for the use of the applicant. For purposes of this rule, the Department will not require submission of a PS-6 for any private security provider who is enrolled in an accredited private security program at the time of application.

(E) If an applicant has not completed each step of the application process, including training, the applicant can not perform unsupervised private security services. Such persons may only provide private security services under the direct supervision of a certified private security professional, licensed executive or supervisory manager. The person being monitored can not make decisions regarding any course of action independent of the person providing the direct supervision. The duration for direct supervision for an applicant is no more than 21 consecutive calendar days, during which time the applicant must be under the uninterrupted presence of a certified private security professional.

(F) The intent of the Form PS-20 provision is to allow a company to employ and deploy a private security professional or manager, while the application for certification or licensure is being processed. A temporary work permit will not be issued for armed private security professionals.

(G) The Form PS-20 will last no longer than 120 days and, in any event, shall end upon written notice from the Department to the applicant that the permit has been administratively terminated under subsection (1)(b)(H) of this rule.

(H) Upon written notice from the Department to the applicant and the manager who signed the Form PS-20, the permit and authority to provide private security services may be administratively terminated for the following reasons:

(i) The Department has reason to believe that a person with the applicant's name and birth date has been convicted of a disqualifying crime listed in OAR 259-060-0020.

(ii) The application is incomplete or the Department has been unable to verify application information to its satisfaction due to non-response or non-compliance of the applicant.

(iii) Applicant has violated any private security administrative rule or condition imposed by Form PS-20. Applicants who provide false information in their application, contrary to their sworn oath, will be disqualified from reapplying for a period of 10 years.

(iv) The fingerprint cards of applicant have been rejected under subsection 5(b) of this rule.

(I) Upon notification from the Department that the Form PS-20 has been administratively terminated because of a deficiency in application, the manager who signed the permit must notify the applicant that he or she may not perform private security services. A new application with corrected deficiencies must be filed, along with a new certification fee, prior to the applicant resuming duties. This provision does not apply to terminations based upon criminal conviction disqualification.

(J) The termination of the Form PS-20 due to a criminal conviction disqualification is subject to the contested case hearing procedures set forth in OAR 259-060-0300.

(c) The Department or its designated staff may administratively terminate the application process if the Department is unable to complete the certification process due to non-response or non-compliance of the applicant after exhausting the following efforts:

(A) A letter will be mailed by the Department to the applicant, and the last known employer of the applicant, identifying the deficiencies in the Form PS-1, or the rejection of the fingerprint cards of applicant.

(B) The applicant and any manager supervising the applicant will have 21 calendar days from the date of mailing to bring the applicant into compliance and to notify the Department that the deficiencies are corrected. The Department may, in its discretion, elect to extend the time for compliance upon good cause shown by the applicant or its manager.

(C) If the Department is unable to determine a current address for the applicant, or if the applicant or manager does not respond and correct the deficiencies within 21 calendar days, or such additional time authorized by the Department, the Department will list the applicant's status as "administratively terminated." The Department will notify the applicant at his or her last known address, and notify the last known employer of the applicant, that the Department has administratively terminated the application process.

(D) Once the application process has been administratively terminated, the applicant will be required to submit a new Form PS-1, with another certification fee. An applicant whose application process has been administratively terminated is not eligible to perform private security services until a new, complete application and fees are submitted to the Department, along with a Form PS-6 providing proof of new basic training.

(2) The requirements for certification as an unarmed private security professional are as follows:

(a) Compliance with the minimum standards for certification under OAR 259-060-0020;

(b) Successful completion of the mandatory eight-hour basic classroom instruction required under OAR 259-060-0060, including successful completion of the written examination;

(c) Successful completion of the mandatory four-hour assessment module required under OAR 259-060-0075; and

(d) Submission to the Department of the completed application packet as required under Sub (5) of this rule, together with the appropriate fees.

(3) The requirements for certification as an armed private security professional are as follows:

(a) Compliance with the minimum standards for certification under OAR 259-060-0020;

(b) Successful completion of the mandatory eight-hour basic classroom instruction required under OAR 259-060-0060, including successful completion of the written examination;

(c) Successful completion of the mandatory four-hour assessment module required under OAR 259-060-0075;

(d) Successful completion of the mandatory 15-hour firearms course and marksmanship qualification required under OAR 259-060-0070, including successful completion of the written examination and satisfaction of marksmanship requirements; and

(e) Submission to the Department of the completed application packet as required under (5) of this rule, together with the appropriate fees.

(4) A certified private security provider or applicant must carry the certificate or Form PS-20 on his or her person at all times while performing security services or while on duty. The certificate or Form PS-20 must be presented to any law enforcement officer upon demand, and must be displayed to any other person upon reasonable request. A temporary work permit will not be issued for instructors or armed private security professionals.

(5) The application packet for certification as a private security provider must include:

(a) A completed Form PS-1, including a sworn affidavit attesting to the truth and correctness of the information provided by the applicant, and acknowledging the Department's right to terminate a temporary work permit. Falsification of this application can result in a denial of certification for up to ten years, as well as pursuit of criminal charges.

(b) A completed fingerprint packet. The Department will accept fingerprint cards correctly rolled and completed by private security or public safety personnel trained to roll fingerprints, or a person who is employed and trained by a private business that provides fingerprinting services. These fingerprint cards must be submitted on the pre-printed FBI fingerprint cards supplied by the Department, and must be sealed in a tamper-proof bag by the person rolling the prints. A fee will be charged for the third submittal of fingerprint cards if rejected twice by the Federal Bureau of Investigation;

(A) A fingerprint packet must include two fingerprint cards, and a Form PS-4. The person rolling the fingerprints must complete Form PS-4, enclose the two completed fingerprint cards and the Form PS-4 in the tamper-proof bag, seal it, and return it to the applicant.

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(B) When the fees, application and completed fingerprint packet are received, the Department will assign a Private Security Identification number to the applicant, record that number on the fingerprint cards and forward the fingerprint cards to Oregon State Police. The Oregon State Police will process one set of the prints and send the other set of prints to the Federal Bureau of Investigation (FBI) for processing;

(C) The applicant's fingerprints will be retained and kept on file by the Oregon State Police Identification Services Section;

(D) The Oregon State Police Identification Services Section will notify the Department or its designated staff of any criminal record disclosed through processing the applicant's fingerprint cards; and

(E) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department will comply with the most current requirements.

(c) The original Form PS-6 sealed by the instructor in the approved tamper-proof bag;

(d) A completed Form PS-7 (Private Security Instructor Evaluation) (optional);

(e) The original of completed Form PS-20 when required.

(6) The applicant must submit the nonrefundable certification fee (including the fingerprint processing fee) to the Department or its designated staff, along with the application packet.

(7) The completed application packet must be mailed to the Department or its designated staff prior to the applicant performing any private security services.

(8) Renewal of certification must occur every two years subject to the following conditions:

(a) The certificate holder must, within the 90-day period prior to certificate expiration, obtain refresher training as provided for in OAR 259-060-0080, submit the Form PS-6, required fees and a completed Form PS-21 (Renewal of Private Security Licensure or Certification). A copy of the Form PS-21 must be carried on the provider's person, while performing private security duties, until a new certificate is received.

(b) The provider must submit the nonrefundable renewal fee to the Department or its designated staff.

(c) The renewal documents must be received by the Department not more than 90 days prior to the anniversary date of the certification or licensure to allow for processing of the forms and criminal history check. The background check may determine convictions or other conditions under OAR 259-060-0020 that would disqualify the provider.

(d) Failure to comply with renewal requirements will result in the expiration of certificate or license.

(A) Persons reapplying within 90 days of expiration must complete the Form PS-21, and shall submit the certification fee.

(B) Persons reapplying after 90 days of expiration must complete the Form PS-21 (Application for Licensure or Certification), and must submit the certification fees, plus a \$25.00 late submission penalty fee.

(C) Persons continuing to provide private security services, after the certification has expired will be subject to penalties as provided for in ORS 181.991.

(9) Any private security provider who is arrested or charged criminal must notify the provider's employer and the Department of that fact not later than 48 hours after the arrest or charge is filed. Any employer who knows that an employee has been arrested or charged with a crime must notify the Department of that fact not later than 48 hours after the employer acquired knowledge. The initial notification may be by telephone, but must be immediately followed by written notification. The notification must include the specific charges, the county and state where any charges are pending, the investigating agency, and the date of the arrest. Failure to notify the Department may result in suspension of the arrested person's certification or licensure.

(10) The applicant or private security provider must notify the Department or its designated staff within 14 calendar days of any change of address by using Form PS-23 (Private Security Services Provider Change of Information). Executive managers may use the form to advise the Department of the termination of employment, or provide their own list. Under ORS 305.385, a summary of all private security providers and applicants is provided annually to the Oregon Department of Revenue, including name, address and Social Security number.

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

Stat. Auth.: ORS 181.873 - 181.878 & 181.883 - 181.885

Stats. Implemented: ORS 181.873 - 181.878 & 181.883 - 181.885

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002,

f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 3-2005(Temp), f. 4-25-05, cert. ef. 5-1-05 thru 10-28-05; DPSST 9-2005, f. & cert. ef. 10-14-05; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 4-2007, f. & cert. ef. 2-15-07; DPSST 6-2008, f. & cert. ef. 4-15-08

259-060-0130

Licensing of Executive and Supervisory Manager

(1) Under ORS 181.873(1)(b), it is unlawful for a person to engage in the business of, executive or supervisory manager, or to offer services in such capacities, unless the person has obtained a license in accordance with these rules.

(2) Each business, employer, or entity with a private security professional staff of at least one person must designate one employee who performs the duties of an "Executive Manager", as described in these rules, to obtain an Executive Manager license. An employer may obtain licensure for more than one executive manager. Any person who has responsibility and authority in supervising persons providing security services, who has not been licensed as an Executive Manager, must obtain a Supervisory Manager license. This provision applies to any business, employer or entity that provides private security services within this state, regardless of whether the business, employer or entity is located in or out of this state.

(a) In the event contract private security services are utilized, and the business or entity is not itself engaged in providing private security services, or engaging employees in private security services, there is no requirement for that business or entity to obtain a license under these rules.

(b) Issuance of an executive manager or supervisory manager license requires that the applicant meet the qualifications set forth in OAR 259-060-0020. This license authorizes the holder to distribute temporary work permits to private security professionals. A temporary work permit will not be issued for armed private security applicants. The executive manager or supervisory manager must review each application for completeness and criminal history, prior to mailing. DPSST must deny certification for applicants with certain convictions, as outlined in OAR 259-060-0020. Fees are not refundable.

(3) The requirements for licensing as an executive manager or supervisory manager are as follows:

(a) Compliance with the minimum standards for licensing under OAR 259-060-0020;

(b) Successful completion of training required under OAR 259-060-0060, including successful completion of the written examination and orientation under OAR 259-060-0065, and 259-060-0075. The training orientation specific to managers is required; and

(c) Submission to the Department of the completed application packet as required under subsection (6) of this rule, together with the appropriate fees. Because the manager training is completed through self-study, the training manual must be mailed to the manager by the Department upon receipt of the Form PS-1 (Application for Licensure or Certification of Private Security Providers), the fingerprint packet and the appropriate fees. To complete the application process, the manager must complete the written examination and attend the mandated manager orientation. Licensure as a manager does not allow the manager to provide private security services as a professional; the appropriate training course must be completed in order to do so.

(4) The application packet for licensure as an executive manager or supervisory manager must include:

(a) A completed Form PS-1 (Application for Licensure or Certification of Private Security Services Providers);

(b) A completed Form PS-4 (Affidavit of Person Rolling Fingerprints) and fingerprint cards, sealed in a tamper-proof bag;

(c) A completed Form PS-20 (Temporary Work Permit), if the manager-designate qualifies for pre-training employment under the provisions of sub-section (11) in this rule.

(5) The applicant must submit the nonrefundable applicable fee to the Department or its designated staff, along with the application packet.

(6) The completed application packet must be mailed to the Department prior to the performance by the applicant of any services as an executive manager or supervisory manager.

(7) Renewal of licensure must occur every two years subject to the following conditions:

(a) The license holder must complete and submit Form PS-21 (Renewal of Private Security Licensure or Certification). Completion of a biennial four-hour refresher course is required under OAR 259-060-0080(1)(a).

(b) The applicant must submit the nonrefundable renewal fee to the Department or its designated staff.

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(c) The renewal documents must be received by the Department not more than 90 days prior to the expiration of the current license.

(d) Failure to comply with renewal requirements will result in the expiration of the license as provided for in OAR 259-060-0120(8)(d). Managers with expired licensure are not eligible to perform security services until a new, complete application and fees are submitted to the Department, along with a \$25.00 late submission penalty fee. New manager orientation training will also be required.

(8) During the two-year certification period, in the event of a staff change of executive manager(s) or supervisory manager(s), the company or entity must select a replacement manager, and must cause that person to apply for licensure as an Executive Manager or Supervisory Manager, as required. The company or entity must immediately notify the Department of the staff change on Form PS-23 (Change of Information). The new manager must complete a four-hour management orientation.

(9) A licensed manager who performs private security services must complete the full training required for that classification and be certified.

(10) An applicant or person may hold a temporary work permit as an executive manager or supervisory manager for up to 120 days under the following conditions:

(a) A company or entity has newly established a private security services workforce over whom the person will command, or an existing licensed executive or supervisory manager is suddenly unable to perform such duties due to death, termination or other unexpected circumstance.

(b) The person seeking a temporary work permit as an executive manager or supervisory manager holds at least one of the following qualifications:

(A) Certified in this state as a private security professional; or

(B) Holds a management position that, in the chain of supervision, is equal to, or higher than, the vacated licensed position.

(c) A Form PS-20 (Private Security Services Provider Temporary Work Permit) must be completed and forwarded to the Department or its designated staff prior to performing any duties as an executive manager or supervisory manager relating to providing security services in this state, and is subject to the conditions found under OAR 259-060-0120(1)(b)(G)-(J).

(d) If the person seeking a temporary work permit as an executive manager or supervisory manager has not completed each step of the application process, the person may not have oversight responsibilities for private security services or staff, and the business or entity may not provide private security services.

(e) The intent of the Form PS-20 provision is to allow a business or entity to employ an executive manager or supervisory manager to provide private security services while the recruitment is in process.

(f) An executive manager or supervisory manager may also be temporarily assigned to provide private security services under the provisions of OAR 259-060-0120(1)(a).

(11) The Department or its designated staff may administratively terminate the application process as provided for in OAR 259-060-0120(1)(c)(A)-(D).

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

Stat. Auth.: ORS 181.873 - 181.878 & 181.883 - 181.885

Stats. Implemented: ORS 181.873 - 181.878 & 181.883 - 181.885

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 6-2008, f. & cert. ef. 4-15-08

259-060-0135

Certification of Private Security Instructors

(1) The Department or its designated staff must certify instructors deemed qualified to teach in any required private security professional training courses.

(2) Certified Private Security Instructor

(a) The minimum requirements for certification as an instructor are as follows:

(A) Compliance with the minimum standards for certification under OAR 259-060-0020;

(B) Successful completion of training and examination required under OAR 259-060-0060, 0065 and 0075; and instructor training delivered by the Department or its designated staff;

(C) High school diploma or GED;

(D) Minimum of three years work experience in the private security services, military police, or law enforcement fields; and

(E) Compliance with the age requirements under the Private Security Service Providers Act;

(b) A certified instructor is authorized to:

(A) Provide the eight-hour "basic" instruction based on the approved or accredited course content and materials provided by the Department or its designated staff as specified in OAR 259-060-0060;

(B) Provide the four-hour assessment module based on the approved or accredited private security professional course content, materials and assessment criteria provided by the Department or its designated staff as specified in OAR 259-060-0075;

(C) Provide the four-hour biennial refresher training and testing based on the approved or accredited private security professional course content and materials provided by the Department or its designated staff as specified in OAR 259-060-0080; and

(D) Administer the applicable written examination(s) as specified in OAR 259-060-0065.

(c) The certified instructor must conduct all instruction, training and testing required by the Department in accordance with these rules. The instructor must provide to the applicant the fully-completed original Form PS-6 (Affidavit of Instructor and Private Security Provider Testing Results), sealed in a tamper-proof bag, if the applicant successfully completes all requirements. Additionally, the instructor must provide the applicant with a Form PS-6 colored carbon copy, and the instructor will retain the other carbon copy in the instructor's files for the life of the training (two years).

(3) Certified Private Security Firearms Instructor

(a) The minimum requirements for certification as a private security firearms instructor are as follows:

(A) Compliance with the minimum standards for certification under OAR 259-060-0020;

(B) Successful completion of training required under OAR 259-060-0060 and 259-060-0075, including the successful completion of the written examination and orientation required under OAR 259-060-0065;

(C) Compliance with the firearms restriction requirements of OAR 259-060-0020(5); and

(D) Hold one or more of the following:

(i) A current certification through the National Rifle Association Law Enforcement Firearms Instructor Development School;

(ii) A current certification as a firearms instructor through the Federal Law Enforcement Training Center;

(iii) A current certification from a Department-certified law enforcement or criminal justice firearms instructor course;

(iv) A current certification as a firearms instructor through the Federal Bureau of Investigation; or

(v) A current certification as a private security firearms instructor through the Washington Criminal Justice Training Center.

(b) A certified private security firearms instructor is authorized to:

(A) Provide firearms instruction based upon curriculum approved by the Board, and administer firearms marksmanship qualifications as provided by the Department, or its designated staff, as specified in OAR 259-060-0070;

(B) Provide the annual firearms classroom instruction and firearms requalification as specified in OAR 259-060-0085;

(C) Administer required armed written examination as specified in OAR 259-060-0065; and

(D) Terminate the firearms instruction or firearms marksmanship qualification if, in the instructor's opinion, the applicant is unfit to proceed, taking into consideration the applicant's poor judgment, unsafe practices, abnormal behavior, or other relevant factors. The instructor must immediately notify the applicant of the reason for termination of training and must also notify the Department or its designated staff within 48 hours in writing, using Form PS-6 (Affidavit of Instructor and Private Security Provider Testing Results).

(c) A certified private security firearms instructor must conduct all instruction, training, qualification and testing required by the Department in accordance with these rules. Only the certified instructor who conducts the training will sign the Form PS-6. The instructor must provide to the applicant the fully-completed original Form PS-6, sealed in a tamper-proof bag, if the applicant successfully completed all requirements. Additionally, the instructor must provide the applicant with a Form PS-6 colored carbon copy, and the instructor will retain the other carbon copy in the instructor's files for the life of the training (two years).

(4) Applications for instructor certification must be submitted on Form PS-1 (Application for Licensure or Certification of Private Security Services Provider), and must be accompanied by fees, a detailed resume of

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the applicant's qualifications, including a copy of a firearms instructor certificate (if applicable), and a fingerprint packet completed and sealed in compliance with OAR 259-060-0120(5)(b).

(5) If instructor certification is denied, the requesting applicant must be notified in writing and advised of the reasons for denial.

(6) Review of instructor certification may be initiated upon the request of a private security provider, the Department or its designee, or other reliable source.

(7) Instructor certification is valid for two years. The certification will be renewed upon:

(A) Payment of a nonrefundable renewal fee; and

(B) Proof of at least eight hours of course-work relating to any of the specific subjects being taught or generally improving instructor skills; and

(C) Successful completion of an instructor refresher course delivered by the Department or its designee.

(8) Failure to comply with renewal requirements shall result in the expiration of certification. Reapplication after expiration can be conducted as provided for in OAR 259-060-0120(8)(d).

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

Stat. Auth.: ORS 181.878 & 181.883

Stats. Implemented: ORS 181.878

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 11-2005, f. & cert. ef. 10-14-05; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 4-2007, f. & cert. ef. 2-15-07; DPSST 6-2008, f. & cert. ef. 4-15-08

259-060-0450

Compliance

(1) The Department or its designated staff may cause inspections of records and procedures of security managers, instructors, and private security professionals relating to the minimum employment standards and training standards that are mandated by the Private Security Service Providers Act, as well as those records and procedures which are under the purview of OAR 259-060-0000 to 259-060-0500, in order to verify adherence to and compliance with any applicable rule or statute.

(2) The Department or its designated staff may cause any administrative proceeding and/or court action to be initiated to enforce compliance with the provisions of the Private Security Service Providers Act, and the administrative rules promulgated thereunder.

(3) Scope and authority. Application of a civil penalty includes, but is not limited to, the violations set out in sub-section (5) of this rule.

(a) This rule sets guidelines for civil penalties for violations of the private security laws under ORS 181, and the administrative rules under chapter 259, division 60;

(b) This rule is authorized by ORS 181.870-181.991 and carries out ORS 181.991.

(4) Definitions. For the purposes of this rule:

(a) "Flagrant violation" is:

(A) An act by a provider, contractor, owner or manager who, after being notified of a violation, intentionally continues it;

(b) "Penalty order" is the entry of an administrative order, either:

(A) Assessing a penalty; or

(B) Finding a violation, regardless of whether a penalty is assessed.

(c) "Subsequent violation" is a repeat violation of any statute or rule within a 36-month period following any order for the same violation.

(5) Civil penalty amounts. For non-flagrant violations,

(a) A penalty of no less than \$250 for the first violation and \$500 for subsequent violations shall be charged for each of the following:

(A) Failure by an unarmed private security officer or private security officer-alarm monitor to complete training, apply for certification or obtain a temporary work permit, prior to providing private security services;

(B) Falsification of DPSST-submitted documents by an unarmed private security officer or private security officer-alarm monitor;

(C) Failure of an unarmed private security officer or private security officer-alarm monitor to cease providing private security services upon notice of termination, suspension, denial or revocation;

(D) Failure of an unarmed private security officer or private security officer-alarm monitor to report his or her own arrest.

(b) A penalty of no less than \$500 for the first violation and \$750 for subsequent violations shall be charged for each of the following:

(A) Failure by an armed private security officer to complete training or apply for certification prior to providing private security services;

(B) Falsification of DPSST-submitted documents by an armed private security officer;

(C) Failure of an armed private security officer to cease providing private security services upon notice of termination, suspension, denial or revocation;

(D) Failure of an armed private security officer to report his or her own arrest

(c) A penalty of no less than \$500 for the first violation and \$750 for subsequent violations shall be charged for each of the following:

(A) Failure by a private security unarmed or alarm monitor instructor to complete training or apply for certification, prior to providing private security training;

(B) Falsification of DPSST-submitted documents by a private security unarmed security or alarm monitor instructor;

(C) Failure of a private security unarmed or alarm monitor instructor to cease providing private security training upon notice of termination, suspension, denial or revocation;

(D) Failure of a private security unarmed or alarm monitor instructor to report his or her own arrest;

(E) Failure of a private security unarmed or alarm monitor instructor to instruct the full DPSST-certified curriculum as required by ORS 181.883.

(d) A penalty of no less than \$750 for the first violation and \$1,000 for subsequent violations shall be charged for each of the following:

(A) Failure by a private security firearms instructor to complete training or apply for certification, prior to providing private security training;

(B) Falsification of DPSST-submitted documents by a private security firearms instructor;

(C) Failure of a private security firearms instructor to cease providing private security training upon notice of termination, suspension, denial or revocation;

(D) Failure of a private security firearms instructor to report his or her own arrest;

(E) Failure of a private security firearms instructor to instruct the full DPSST-certified curriculum as required by ORS 181.883.

(e) A penalty of no less than \$1,000 for the first violation and \$1,500 for subsequent violations shall be charged for each of the following:

(A) Failure by a private security manager to complete training or apply for certification, prior to providing private security services, except as provided for in OAR 259-060-0130(11);

(B) Falsification of DPSST-submitted documents by a private security manager;

(C) Failure of a private security manager to cease providing private security services upon notice of termination, suspension, denial or revocation;

(D) Failure of a private security manager to report his or her own arrest, or the known arrest of an employed private security services provider;

(E) Failure of a private security manager to terminate the employment of a private security services provider or applicant whose application has been terminated, or whose certificate has been suspended, denied or revoked, upon notice from the Department to do so.

(F) The employment of private security providers who have not completed the training and application process required under the Private Security Service Providers Act.

(6) Procedures.

(a) Except as provided in section (8) of this rule, a case report of the designated failure to comply and subsequent recommendation of civil penalty shall be forwarded by staff for review by the Advisory Committee on Private Security Services, which in turn, shall forward its recommendation to the Board for final dispensation.

(b) Written notice of the violation of administrative rule or statute shall be served upon the licensee or certificate holder by certified and regular mail, with an opportunity for the licensee or certificate holder to remedy the violation within 14 days of the mailing of the notice, except for providers who have falsified the criminal history section of an application;

(c) Civil penalties may be lowered from the amount set in this rule, waived where further mitigation is warranted, or resolved by stipulation as provided in section (8) of this rule. Providers who remedy the stated violation and come into compliance without hearing may be assessed half of the penalty provided for in this rule.

(7) Options.

(a) If civil penalties are sought under ORS 181.991 for a continuing flagrant violation of the private security laws or rules, staff shall seek, and the committee shall recommend to the Board on Public Safety Standards and Training, the assessment of \$1,500 per occurrence.

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(b) If judicial review of any application of a penalty under this section is requested under ORS 183.480:

(A) No civil penalty shall be sought or assessed for the alleged violation until after the review has been completed and the assessment upheld;

(B) Notwithstanding a request for judicial review, civil penalties can be brought or assessed for failure to comply with other laws or rules that do not involve the matter under review;

(C) The obligation to advise the Department of a judicial review request is on the person charged or about to be charged for the violation.

(8) Resolution by stipulation.

(a) Department staff is authorized to seek resolution by stipulation, subject to acceptance and approval by the Board or Director, if:

(A) The matter is resolved before entry of an order assessing penalty;

(B) The respondent corrects or proceeds to correct all deficiencies itemized by Department staff within the time allowed; and

(C) The penalty amount agreed to is paid and received with the stipulation.

(b) A stipulation shall not be accepted for less than the guideline provided for in this rule if the violation is for failure to obtain a required certificate or license, and such is not obtained as part of the resolution.

Stat. Auth.: ORS 181.878

Stats. Implemented: ORS 181.878

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. & cert. ef. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 11-2007, f. & cert. ef. 10-15-07; DPSST 6-2008, f. & cert. ef. 4-15-08

259-060-0500

License Fees

Payments to the Department are non-refundable, and must be paid by business check, money order, cashier's check or credit card. No personal checks or cash will be accepted. The Department will charge the following fees:

(1) The fee of \$50 for the issuance of each two-year certification as a private security professional.

(2) Appropriate fees must be submitted with each application for a fingerprint criminal history check. These fees are to recover the costs administering the fingerprint check through the Oregon State Police and Federal Bureau of Investigation. An additional fee will be charged for the third submittal of fingerprint cards when rejected for filing by FBI. Current fee schedules for processing fingerprints may be obtained from the Department.

(3) The fee of \$50 for the issuance of a two-year license as a supervisory manager.

(4) The fee of \$250 for the issuance of a two-year license as an executive manager.

(5) The fee of \$80 for the issuance of a two-year certification as a private security instructor.

(6) The fee of \$20 for the issuance of each upgrade, duplicate or replacement card issued.

(7) The late submission penalty fee of \$25 may be added to the fees for recertification if the provider fails to complete certification by the expiration date of the license or certificate. If an applicant provides documented proof, such as payroll data, that he or she has not been employed to provide private security services since the prior certification or licensure expired, the late penalty may be waived by the Department's designated staff.

(8) In the event a non-sufficient check is received for payment, an additional \$25 administrative fee will be assessed.

Stat. Auth.: ORS 181.878

Stats. Implemented: ORS 181.878

Hist.: PS 1-1997(Temp), f. & cert. ef. 2-21-97, cert. ef. 2-24-97; PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. & cert. ef. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 12-2003, f. & cert. ef. 7-24-03; DPSST 3-2005(Temp), f. & cert. ef. 4-25-05, cert. ef. 5-1-05 thru 10-28-05; DPSST 11-2005, f. & cert. ef. 10-14-05; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 6-2008, f. & cert. ef. 4-15-08

259-061-0015

Payment of Fees

Fees are due at the time of application. Payments to the department are non-refundable, and must be paid by business check, money order,

cashier's check or credit card. A current fee schedule for the private investigator licensing program may be obtained from the department.

NOTE: Make all checks payable to DPSST.

Stat. Auth.: ORS 703.415, 703.425, 703.430, 703.435, 703.445, 703.450, 703.460, 703.465 & 703.480

Stats. Implemented: ORS 703.401 - 703.995

Hist.: DPSST 7-2006, f. & cert. ef. 5-15-06; DPSST 6-2008, f. & cert. ef. 4-15-08

Department of State Lands

Chapter 141

Rule Caption: Establishes an expedited permit for fish habitat improvement projects, including large wood and boulders.

Adm. Order No.: DSL 1-2008

Filed with Sec. of State: 4-14-2008

Certified to be Effective: 5-1-08

Notice Publication Date: 2-1-2008

Rules Adopted: 141-089-0350, 141-089-0355, 141-089-0360, 141-089-0365, 141-089-0370, 141-089-0375, 141-089-0380, 141-089-0385, 141-089-0390

Subject: Establish an expedited General Authorization (GA) for the placement of large wood, placement of large boulders in bedrock-dominated systems, and placement of spawning gravel to improve fish habitat conditions. The process to obtain authorization would be to notify the agency on the GA application and obtain a verification, "approval," from the agency before starting the activity. The application would not go out for public review. DSL review will occur within 15 days instead of the current 40 days allowed under existing GA process.

Rules Coordinator: Elizabeth Bott—(503) 986-5239

141-089-0350

Purpose and Applicability

This rule sets forth conditions under which an applicant may, without an individual removal-fill permit from the Department, place large wood, boulders, and/or spawning gravel within waters of this state (including Essential Salmon Habitat as designated in OAR 141-102) for the purpose of aquatic habitat enhancement. An authorization from the Department is required before beginning an activity authorized by this general authorization. An applicant must submit a complete application on a form provided by the Department and agree to the eligibility requirements (141-089-0355), mandatory requirements (141-089-0360), project guidelines (141-089-0365), and conditions for issuance (141-089-0375). The terms and conditions of issuance will be stated in the authorization. The authorization is not transferable to another person.

(1) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature, will not result in long-term harm to water resources of this state, and will cause only minimal individual and cumulative environmental impacts.

(2) Unless otherwise specified, the terms used in this general authorization (GA) are defined in OAR 141-085-0010.

(3) Applications that qualify for this general authorization are exempt from the removal-fill permit fees.

(4) If a dispute arises as to the applicability of this general authorization to a proposal, the Department makes the final determination. The Department will rely upon the application, its supporting documentation and other relevant criteria.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 1-2008, f. 4-14-08, cert. ef. 5-1-08

141-089-0355

Eligibility Requirements

The Department will review each application to determine whether the proposed activity complies with this general authorization rule.

(1) To be eligible, a project must be for the purpose of improving aquatic habitat and, as defined in 141-089-0360, consist of placement of the following in a non-tidal river or stream:

(a) Unanchored large wood;

(b) Boulders to stabilize large wood;

(c) Boulders to improve habitat complexity; or

(d) Spawning gravel in conjunction with one of the above.

(2) A project is not eligible for this general authorization if it:

(a) Fails to meet any eligibility requirement, mandatory requirement (141-089-0360), or project guideline (141-089-0365);

ADMINISTRATIVE RULES

- (b) Is within a State Scenic Waterway or Federal Wild and Scenic Waterway;
- (c) Is within an area that is tidally influenced;
- (d) Is within city limits or urban growth boundary; or
- (e) Includes any other structure, use or activity subject to other permit requirements.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990
Hist.: DSL 1-2008, f. 4-14-08, cert. ef. 5-1-08

141-089-0360

Mandatory Requirements

- (1) Under this general authorization, an activity must not:
 - (a) Use permanent anchoring (including rebar, cabling, or keying into the streambank) to meet stability criteria. Biodegradable manila or sisal rope may be used for temporary stabilization;
 - (b) Cause more than minimal adverse effect on navigation or recreation;
 - (c) Include construction of access roads within waters of this state or associated riparian areas. This prohibition includes grading or sloping the ground surface and temporarily placing rock or dirt in order to access the waterway. However, operation of equipment across the surface of the ground with minimal soil disturbance, or clearing of preexisting roads, skid roads, or similar constructed features is allowable provided the work is limited to the extent needed to obtain access;
 - (d) Cause the water to rise or be redirected in such a manner that it may result in flooding or other harmful impacts to structures or property off-site; or
 - (e) Result in adverse impact to wetlands including converting wetlands to open water.
- (2) When necessary to protect and conserve the water resources of this state, the Department may waive or modify any conflicting guidelines, mandatory requirements, or conditions of this general authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990
Hist.: DSL 1-2008, f. 4-14-08, cert. ef. 5-1-08

141-089-0365

Project Guidelines

The following categories of activities are allowed under this general authorization:

- (1) Placement of large wood, including logs, trees and rootwads, in stream channels where large wood should naturally occur, but is currently lacking due to past management practices or other conditions.
 - (a) Large wood placement must be for the purpose of increasing coarse sediment storage, habitat diversity and complexity, retaining gravel for spawning habitat, improving diversity of flow patterns, providing long-term nutrient storage and substrate for aquatic organisms, moderating flow disturbances, increasing retention of leaf litter, or providing refuge for fish during high flows.
 - (b) Large wood placement projects must rely on the size of the wood for stability, to the extent possible.
 - (c) Logs and trees must not be removed from locations where they serve a valuable function or are wildlife trees. Use of decayed or fragmented wood found on the ground or partially sunken in the ground is not allowed.
 - (d) Log habitat structures must contain a minimum of two key wood pieces that meet minimum length and diameter requirements in relation to the stream size and slope. The addition of other large wood and coarse wood to the structures is permitted.
 - (A) Key pieces of wood must be intact, hard, and not more than partially decaying.
 - (B) The length of the key wood pieces, if the rootwad is still attached, must be at least one and one-half times the bankfull width of the waterway (including the rootwad). If the rootwad is not attached, the length of the key wood piece must be at least twice the stream's bankfull width.
 - (C) The diameter of the key wood pieces must meet the following minimum thresholds:
 - (i) For streams with a bankfull width of 0-10 feet, the minimum diameter of wood must be 10 inches and the slope of the stream segment must not exceed 15%.
 - (ii) For streams with a bankfull width of 10-20 feet, the minimum diameter of wood must be 16 inches and the slope of the stream segment must not exceed 9%.
 - (iii) For streams with a bankfull width of 20-32 feet, the minimum diameter of wood must be 18 inches and the slope of the stream segment must not exceed 5%.

(iv) For streams with a bankfull width of 32-50 feet, the minimum diameter of wood must be 22 inches and the slope of the stream segment must not exceed 3%.

(v) For streams with a bankfull width of over 50 feet, no wood placement is allowed under this general authorization.

(e) Wood may be repositioned in the stream as necessary to alleviate threats to public safety or substantial property damage, provided the habitat and resource value of the wood is maintained in that stream segment. Any repositioning of wood must be done in accordance with the above criteria.

(2) Placement of boulders to stabilize large wood, to provide resistance to downstream movement.

(a) The volume of boulders used must be the minimum amount necessary to provide resistance to downstream movement for the large wood.

(b) Boulders must be sized appropriately for the stream. For stability, it is recommended that key boulders be a minimum of twice the diameter of the average of the ten largest naturally occurring boulders in the project stream reach (measured upstream and downstream of the project site). Smaller sizes should be used only if a shear stress analysis of the stream reach shows that a smaller boulder would be stable at high flows.

(c) Boulders and wood may not be combined to form barbs (or similar hydraulic structure), to channelize stream flow, or to stabilize streambanks.

(3) Placement of boulders within stream channels where rock and boulders would naturally occur to retain substrate but are currently lacking:

(a) Boulder placement must be for the purpose of increasing habitat diversity and complexity, improving diversity of flow patterns, providing substrate for aquatic organisms, moderating flow disturbances, or providing refuge for fish during high flows.

(b) The stream reach must meet the following criteria:

(A) The channel must have a slope of less than 10%;

(B) The riparian area must be intact and well vegetated, including trees and shrubs where those species would naturally occur, or restoration and reestablishment of those conditions must be part of project;

(C) The streambed must consist of bedrock, and predominantly coarse gravel or larger sediments

(D) The gravel depth must be less than 30 inches over bedrock in over 50% of the treatment area; and

(E) The total length of stream to be treated with boulders must be limited to 500 feet as measured in the middle of the stream from the first boulder upstream to the last boulder downstream. If the project is restoring multiple segments of the stream, the combination of all segments must not exceed 500 feet.

(c) Boulders must be placed according to the following criteria:

(A) Boulders must be sized appropriately for the stream:

(i) Boulders must be of a size sufficient to be stable under expected high flows (typically 25-year recurrence interval) and, to the extent practicable, be a minimum of twice the diameter of the average of the 10 largest naturally occurring boulders in the project stream reach (measured upstream and downstream of the project site). Smaller sizes should be used only if a shear stress analysis of the stream reach shows that a smaller boulder would be stable at high flows.

(ii) Boulders must not be permanently anchored (including rebar or cabling to meet size or stability criteria).

(B) Boulders must be placed in clusters or patterns that replicate natural stream conditions and that do not substantially modify stream hydraulics. No boulders will be placed to form weirs (e.g., step pools), barbs, dams, or for streambank stabilization or structural armoring of any kind.

(C) Boulder clusters and patterns must not:

(i) Individually, exceed one-third of the bankfull channel width;

(ii) Be placed on just one side of the stream;

(iii) Be configured to shift the stream flow to a single flow pattern in the middle or to the side of the stream;

(iv) Block more than 25% of the cross-sectional area of the flowing channel at the time of installation (e.g. low flow channel width);

(v) Have a gap of less than two feet between clusters to allow adult and juvenile fish passage; or

(vi) Be placed in aggrading or braided channels.

(D) Coarse wood may be placed under the boulders to increase recruitment of sediment.

(E) Boulders must be individually placed (no end dumping allowed).

(4) Placement of spawning gravel in stream channels where gravel would naturally occur but is currently lacking.

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(a) Spawning gravel must be for the purpose of improving spawning substrate by compensating for an identified loss of a natural gravel supply.

(b) The placement of gravel must be done in association with a current or past in-stream habitat restoration project.

(c) Gravel must be of varied sizes, with no more than 5% of the gravel smaller than 0.25 inch and no more than 10% of the gravel larger than 4 inches.

(d) The gravel must be washed, rounded (less than 25% fractured face), composed of hard durable particles resistant to weathering, and of a type similar to that found in the stream basin. No organic soils, silt, clay or soft friable particles may be part of the gravel placement

(e) The gravel must come from a commercial source, or an upland source outside the riparian area. The excavation of gravel from in-stream, or from other waters, is not allowed by this authorization.

(f) Fabric or wire mesh must not be used to hold the gravel in the stream. The placement of coarse wood to retain gravel is permitted.

(g) Gravel must not be placed in pools, and must not block or impede fish passage.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 1-2008, f. 4-14-08, cert. ef. 5-1-08

141-089-0370

Application Requirements; Agency Review

(1) An application for general authorization under this rule must be submitted on a form available from the Department.

(2) A complete application must:

(a) Contain all the information required by the application form.

(b) Be signed by:

(A) The appropriate District Fisheries Biologist of the Oregon Department of Fish and Wildlife; and

(B) The local city or county planning department.

(3) Within fifteen (15) calendar days of receipt of an application, the Department will review it for compliance with these rules and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project modifications, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for this general authorization, the applicant may submit the project for processing and review under another general authorization rule or as an individual permit under OAR 141-085.

(4) If the application is deemed incomplete, the Department will notify the applicant, return the application and identify any missing, inaccurate or insufficient information.

(5) If the Department determines the application does not meet all the requirements for this general authorization, but does meet the requirements for the Fish Habitat Enhancement General Authorization (OAR 141-085-0100 through 0130), the Department will so notify the applicant and process the application accordingly.

(6) The Department may require an individual removal-fill permit for a project that would otherwise qualify for this general authorization if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 1-2008, f. 4-14-08, cert. ef. 5-1-08

141-089-0375

Conditions of Issuance of General Authorization

To conduct work under this general authorization, the holder of a letter of authorization must:

(1) Conduct all work in compliance with all relevant local, state, or federal regulations. All necessary approvals and permits must be obtained before beginning work under this general authorization;

(2) Obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization;

(3) Keep a copy of the letter of authorization available at the work site whenever the activity is underway;

(4) Conduct the work during the time period recommended by the Oregon Department of Fish and Wildlife (**Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources**) unless, after consultation with ODFW, the Department approves a different time period;

(5) Not interfere with fish passage, as per the requirements of the Oregon Department of Fish and Wildlife;

(6) When listed species are present, comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder must contact the Department as soon as possible;

(7) Not disturb or destroy known archeological sites, unless authorized in advance by a permit from the State Historic Preservation Office (SHPO). When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder must immediately cease work at the discovery site and contact the Department and SHPO at (503) 986-0677;

(8) Avoid interference with secured tribal treaty rights and associated rights to access fishing grounds;

(9) Limit removal of woody vegetation to the minimum needed to complete the project, including construction access. If possible, woody vegetation that will sprout from cut stumps, and would otherwise be removed as part of the project, should be cut at ground level and be allowed to re-establish once the project is complete;

(10) Revegetate any areas disturbed in the course of the work, using the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site. Seed mixes that are certified free of noxious weeds and contain exotic species that will hold the soil and not persist can be used for initial site stabilization;

(11) Operate heavy equipment outside of the streambed, unless:

(a) The streambed consists of bedrock, or no compaction will occur in the streambed and only minimal compaction will occur in the floodplain;

(b) There is no surface flow in the channel;

(c) Equipment cannot safely reach the channel work site due to steep and/or rugged terrain;

(d) It is necessary to cross the stream to avoid springs, wetlands, or other sensitive areas; or

(e) It is necessary to avoid or minimize disturbance of riparian vegetation that is serving a unique or valuable function;

(12) Ensure that any heavy equipment working in wetlands are placed on removable mats or pads. Following the removal of the mats or pads, the area must be restored to pre-project conditions;

(13) Prevent petroleum products, chemicals and deleterious materials from entering waters of this state. Prior to entering wetlands or waterways all equipment must be cleaned and otherwise prepared to protect against the release of any petroleum products, chemicals or deleterious materials;

(14) Report any work-related spills that enter waters of this state or onto land with a potential to enter waters of this state to the Oregon Emergency Response System at 800-452-0311;

(15) Install erosion and sediment control measures, and maintain them in proper functioning condition during all phases of the project that involve exposed or disturbed areas. Refer to the DEQ's "Erosion and Sediment Control Manual," April 2005. During construction, monitor erosion and sediment control measures to ensure that failures are identified and repaired immediately;

(16) Comply with the terms of any 401 Water Quality Certification (WQC) issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, and maintain a copy of the WQC on site;

(17) Permit employees of the Department and all duly authorized representatives to access the work area at all reasonable times for the purpose of inspecting work performed under this authorization;

(18) Recognize that the Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance;

(19) Agree to hold the State of Oregon, and its officers, agents, and employees harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements;

(20) Agree that the Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization;

(21) Agree that the Department may, at any time, upon notice to the holder, revoke or modify the authorization if the Department determines that the conditions of the authorization are insufficient to minimize individual or cumulative environmental impacts; and

ADMINISTRATIVE RULES

(22) Agree that the holder is responsible for the activities of all contractors or other operators involved in the work subject to this authorization.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990
Hist.: DSL 1-2008, f. 4-14-08, cert. ef. 5-1-08

141-089-0380

Mandatory Reporting Requirement

(1) Upon completion of the work under this general authorization, and by the deadline specified in the conditions of the authorization, the authorization holder must report to the Department, on a form provided by the Department, information necessary to prove compliance with the terms and conditions of this authorization.

(2) Upon completion of the work under this authorization, the holder must submit an Oregon Watershed Restoration Inventory Report to the Oregon Watershed Enhancement Board using forms provided by the Department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990
Hist.: DSL 1-2008, f. 4-14-08, cert. ef. 5-1-08

141-089-0385

Violation of General Authorization; Enforcement

Violations of the terms and conditions of this general authorization are subject to enforcement action by the Department. Such enforcement actions may include, but are not limited to, civil penalties or suspension or revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work under the authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990
Hist.: DSL 1-2008, f. 4-14-08, cert. ef. 5-1-08

141-089-0390

Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is denied by the Department may obtain an informal review of the Department's decision through the alternative dispute resolution process described in OAR 141-085-0075. However, this is the only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This General Authorization will be reviewed in accordance with the provisions of ORS 196.850(5) on or before January 1, 2011. An authorization letter issued prior to expiration of this General Authorization will remain in effect until April 1, 2013.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990
Hist.: DSL 1-2008, f. 4-14-08, cert. ef. 5-1-08

Department of State Lands, South Slough National Estuarine Reserve Chapter 142

Rule Caption: Regarding fees charged for certain programs and services at South Slough National Estuarine Research Reserve.

Adm. Order No.: SSNER 1-2008

Filed with Sec. of State: 4-14-2008

Certified to be Effective: 4-14-08

Notice Publication Date: 1-1-2008

Rules Adopted: 142-015-0000, 142-015-0010, 142-015-0020, 142-015-0030, 142-015-0040, 142-015-0050

Rules Amended: 142-010-0010, 142-010-0020, 142-010-0045

Subject: These rules outline the procedures that will be used by the Management Commission of the South Slough Estuarine Research Reserve (SSNER) to establish a schedule of fees and to assess and collect fees for certain services and programs offered by the SSNER and to revise the fee schedule.

Rules Coordinator: Elizabeth Bott—(503) 986-5239

142-010-0010

Definitions

As used in these rules, unless the context provides otherwise:

(1) "Advisory Group" means the group of local interested persons and persons with special expertise in fields relating to the Reserve appointed by the Commission to advise the Commission.

(2) "Commercial" refers to an activity undertaken for economic gain, as opposed to an activity for personal use or enjoyment.

(3) "Commission" means the Management Commission of the South Slough National Estuarine Research Reserve created by ORS 273 .554.

(4) "Forest Greenery" means plant material gathered in the Reserve and used for decorative purposes.

(5) "In Kind Services" means materials or services (provided to the Reserve by a group or person) whose value to the Reserve is at least equal to the fee that the Reserve would otherwise charge the group or person for use of the Reserve.

(6) "Manager" means the Manager of the South Slough National Estuarine Research Reserve appointed by the Commission.

(7) "Marketing and Promotion" means Reserve-sponsored events of regional or statewide significance that promote tourism or promote partnerships with local communities, other agencies, or scientific, educational or economic development organizations.

(8) "Non-Profit Entity" means a group having a 501 (c)(3) tax-exempt status filed with the Internal Revenue Service

(9) "OCZM grant" means the original NOAA Grant-in-Aid financial award.

(10) "Operations Manager" is the person responsible for the Reserve's management, facilities, fiscal services and recordkeeping. In the Reserve manager's absence, the Operations Manager may exercise any of the Reserve manager's responsibilities.

(11) "Person" means individuals, a public or private corporation, an unincorporated association, a partnership or a government entity.

(12) "Public Use" means any use of the Reserve that is not a part of a formal Reserve educational or scientific program.

(13) "Recreational" refers to an activity undertaken for personal enjoyment as opposed to economic gain.

(14) "Reserve" means Sanctuary as defined in the Coastal Zone Management Act of 1972 which is the lands, within the boundary of the South Slough National Estuarine Research Reserve under the jurisdiction of the Commission, in which the State of Oregon has legal interest, including, but not limited to fee ownership, conservation easement, and/or life estate. ORS 273 .553(1) states, "...the South Slough Estuary Sanctuary pursuant to chapter 415, Oregon Laws 1975, as the first estuarine sanctuary in the United States," and the 1986 reauthorization of the Coastal Zone Management Act changed the name from Estuarine "Sanctuary" to National Estuarine Research Reserve. South Slough Estuarine Sanctuary is doing business as the South Slough National Estuarine Research Reserve for the purpose of day-to-day business. "Reserve" includes but is not limited to classrooms, day use areas and shelters, cabins, yurts, meeting halls, and other Reserve facilities.

(15) "Special Event" means an activity sponsored by the Reserve that provides education to Reserve visitors, or that otherwise promotes the mission of the Reserve.

(16) "Stewardship" means activities conducted to maintain and restore the integrity and natural dynamic processes of an estuarine ecosystem.

Stat. Auth.: ORS 273
Stats. Implemented: ORS 273
Hist.: SSES 2-1980, f. & ef. 12-23-80; SSES 2-1982, f. & ef. 3-2-82; SSNER 1-1998, f. & cert. ef. 7-15-98; SSNER 1-2008, f. & cert. ef. 4-14-08

142-010-0020

Restricted Activities

The following public, noncommercial uses of the Reserve are permitted with restrictions, subject to applicable fees under OAR 142, division 15 and to action taken by the Commission under rules 142-010-0025, 142-010-0030 and other appropriate governmental agency regulations:

(1) Picking of forest greenery for personal use is permitted only upon written approval by the Manager. The amount gathered should be no more than 10 pounds per day unless otherwise stated in the permit.

(2) Overnight use of the Reserve is allowed only with written permission of the Manager.

(3) Chemical fertilizers, herbicides, or pesticides will be used within the Reserve only if necessary to assure sound management of the ecosystem. Any allowed application of such chemicals shall be approved in writing by the Commission, after consultation with the Advisory Group, in accordance with best management practices so as to prevent direct application or discharge to the estuary waters. It is the intent of the Commission to preferentially utilize nonchemical management techniques of pest control. Chemicals will be utilized for pest or weed control only after it has been determined that the nature and integrity of the ecosystem is endangered by the pest or weed.

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(4) Digging for artifacts is not permitted except as pursuant to ORS 273.705 et seq. and with the written permission of the Commission.

(5) Open fires are allowed only upon approval of the Reserve Manager.

(6) Hunting is allowed only during authorized waterfowl and game hunting seasons, subject to Department of Fish and Wildlife regulations, except in specific areas where the Commission may prohibit hunting for the protection of the health, safety, and welfare of the public. Areas closed to hunting will be posted.

(7) Hunting and Observation Blinds are allowed within the boundaries of the Reserve, but a blind must be taken down and removed from the Reserve at the end of each day.

(8) Motorized boating is permitted except in special protection zones: areas excepted for public health, safety, and welfare, educational uses, and scientific research. Motorized boating will be at reduced speed that will limit the wake to less than a one-foot wave height in order to prevent disturbance to the tidelands and wildlife habitats.

(9) Construction of boat launch and tie-up facilities is permitted only as necessary for health, safety, research, or education.

(10) Oyster culture is limited to the 100 acres as provided in the OCZM grant. The Commission shall recommend appropriate action on each oyster culture application or changes to existing plats within the Reserve to the Reserve of Agriculture.

(11) Tree removal from Reserve lands may occur only with the approval of the Commission, after consultation with the Advisory Group, and only for the following reasons:

- (a) Salvage of windthrow, dead, and dying trees;
- (b) High risk to invasion of forest insects and diseases;
- (c) Hazards to visiting public and scientists;
- (d) Experimental and scientific projects;
- (e) To maintain adequate clear space for existing powerline corridors;
- (f) Thinning to maintain a healthy forest stand.

(12) Firewood cutting for personal use requires a permit from the Reserve Manager.

(13) Pets are permitted only if on a leash or under the direct control of the owner.

(14) Recreational mineral gathering requires a permit from the Manager.

(15) Horseback riding is permitted except in designated areas and not within any watercourse. Information about designated areas may be obtained at Reserve Headquarters.

(16) Picnicking is permitted except in designated areas.

(17) Recreational mushroom gathering, up to a maximum of one gallon per day, is permitted except in designated areas.

(18) Recreational berry picking is permitted except in designated areas.

(19) Recreational bait gathering is permitted except in designated areas subject to Oregon Reserve of Fish and Wildlife regulations.

(20) Recreational clamming is permitted except in designated areas.

(21) No dredging, filling or altering the natural environment except upon the approval of the proposed activities by the Commission.

(22) Motorized off-road vehicles are prohibited except on designated county-maintained roads or driveways approved by the Commission.

(23) Construction of roads is not allowed except by special permit issued by the Commission.

(24) No deliberate introduction of a non-native species (or subspecies) within the Research Reserve's administrative boundaries without the prior approval of the Commission

(25) Trapping within the Reserve's administrative boundaries is prohibited, except for research or management purposes, and then only with the approval of the Manager.

(26) New or increased commercial activities which are not existing as of the creation of the Reserve in June 1974 must be approved by the Commission.

Stat. Auth.: ORS 273

Stats. Implemented: ORS 273

Hist.: SSES 2-1980, f. & ef. 12-23-80; SSES 2-1982, f. & ef. 3-2-82; SSNER 1-1998, f. & cert. ef. 7-15-98; SSNER 1-2008, f. & cert. ef. 4-14-08

142-010-0045

Short-Term Use of Facilities

Overnight use of buildings and facilities is permitted upon approval by the Manager. Employee housing can be provided in a manner consistent with applicable policy governing use of state owned property by state employees (ORS 182.425 and 182.435). See OAR 142, division 015 for applicable fees.

Stat. Auth.: ORS 273

Stats. Implemented: ORS 273

Hist.: SSES 2-1980, f. & ef. 12-23-80; SSES 1-1985, f. & ef. 7-24-85; SSNER 1-1998, f. & cert. ef. 7-15-98; SSNER 1-2008, f. & cert. ef. 4-14-08

142-015-0000

Purpose

OAR 142-015-0000 to 142-015-0050 identify the facilities, equipment and educational and technical services provided by the South Slough National Estuarine Research Reserve for which fees are required, and establish the process that will be used to establish and revise those fees.

Stat. Auth.: ORS 273.554

Stats. Implemented: ORS 273.554(2)

Hist.: SSNER 1-2008, f. & cert. ef. 4-14-08

142-015-0010

Adoption or Revision of Fee Schedule

(1) Subject to approval by the South Slough National Estuarine Research Reserve Management Commission, the Reserve manager shall adopt (and each even-numbered year, revise) a fee schedule for public use of the Reserve facilities, equipment and educational and technical services described in OAR 142-015-0000. The fees must promote the financial self-sufficiency of the Reserve and be based on the following criteria:

- (a) Prevailing rates for comparable facilities, equipment or services;
- (b) Day of week;
- (c) Time of day; and
- (d) Season of year;

(2) A person using any of the listed facilities, equipment or educational or technical services of the Reserve must pay rates established in OAR 142-015-0000 to 142-015-0050 unless otherwise waived or reduced according to these rules.

(3) Unless otherwise noted, fees must be paid in advance of use.

(4) Payment Methods:

(a) A person may pay by personal check, money order, certified check, or travelers check (in U.S. funds).

(b) The Reserve must receive payment within five calendar days after the date the person makes a reservation. If payment is not received within this time, the Reserve will cancel the reservation. Upon cancellation, the Reserve will refund all but a \$6 transaction fee.

(c) If a check is returned to the Reserve for any reason and payment is not resolved, the Reserve will cancel the reservation. Upon cancellation, the Reserve will bill the person for a \$6 transaction fee.

(d) Upon request, government agencies and non-profit entities may be invoiced for use of facilities, equipment or services. Reservations must be made at least 30 days prior to arrival. The Reserve will impose a \$6 transaction fee for each reservation.

(e) Failure to pay any outstanding account balances disqualifies a person from making future reservations.

(5) The Manager or the Operations Manager may waive or reduce fees:

(a) Upon request from state, local, or federal agencies or federally recognized Indian tribes based in the State of Oregon;

(b) When a fee would total \$.50 or less;

(c) When a person or group provides in-kind services or materials, as determined by the Manager or Operations Manager;

(d) For marketing or promotional activities, (including but not limited to special events and commercial filming) that promote the use of Reserve areas and Oregon tourism; or

(e) For traditional or cultural tribal activities in accordance with Commission policy.

Stat. Auth.: ORS 273.554

Stats. Implemented: ORS 273.554(2)

Hist.: SSNER 1-2008, f. & cert. ef. 4-14-08

142-015-0020

Fee Categories

(1) The following public uses of Reserve facilities, equipment or services are subject to the fee established pursuant to OAR 142-015-0010:

(a) FACILITIES FEES — The following fees apply to the use of Reserve facilities for events not initiated by the Reserve:

(A) Spruce Ranch Field Housing, including yurts, camping in yard — fees recover costs of field housing, including fuel oil for heating, and all other provided utilities, plus generate a revenue stream toward creating a facilities maintenance fund.

(B) Interpretive Center Auditorium — fees must recover costs of building operation plus generate a revenue stream toward creating a facilities maintenance fund.

(C) Interpretive Center Classroom — fees must recover costs of building operation plus generate a revenue stream toward creating a facilities

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maintenance fund, as well as pay for maintaining and replacing supplies and artifacts.

(D) Staff time to open, monitor, close and secure facilities – fees must recover salary cost for the building supervisor (including overtime were required).

(E) Event Set-Up, Clean Up – fees must recover salary cost for building supervisor and laborer (including any overtime).

(F) Administrative Support, including supplies — fees must recover salary cost for staff assistance, use of photocopier, paper, telephones, easels, charts and other expendable supplies.

(b) EDUCATIONAL AND TECHNICAL SERVICE FEES: The following fees apply to the use of Reserve educational or technical services, regardless of whether the Reserve initiated the activity. Fees shall include any administrative, facility or equipment costs:

(A) On-site Interpretive Programs — fees must recover salary cost for educator or interpreter services, maintenance costs for facilities, and technical services costs by the Reserve and shall include administrative, facilities, and equipment costs.

(B) Off-site Interpretive Programs – fees must recover salary cost for educator or interpreter services, transportation fuel costs and technical services costs.

(c) EQUIPMENT FEES:

(A) Use of Laboratory Equipment by non-Reserve investigators — fees must recover costs of equipment operation, plus generate a revenue stream for funds needed to repair or replace aging equipment. The amount of the fee shall be the same as the value given to equipment when equipment is used as grant match.

(B) Instructional Materials — fees must recover costs of duplication plus minimal training in uses.

(C) Vehicles, Boats, Motorized Machinery — fees must recover operating costs plus generate a revenue stream for maintenance, replacement and risk fund.

(D) Large Format Poster Plotter — fees must recover cost of supplies plus staff cost of any employee who prints student work on demand.

(E) Equipment Use at Event — fees must recover costs of equipment operation plus generate a revenue stream for repair or replacement of aging equipment.

(F) Equipment Use Off-Site — fees must recover costs of equipment operation plus generate a revenue stream for repair or replacement of aging equipment, creation of a risk fund, the cost of transport (if any) and staff time to provide basic instruction in use and check-out/in activities.

Stat. Auth.: ORS 273.554

Stats. Implemented: ORS 273.554(2)

Hist.: SSNER 1-2008, f. & cert. ef. 4-14-08

142-015-0030

Fee Tiers

Fees established pursuant to OAR 142-015-000 to 142-015-0050 must recognize the following four tiers to reflect the diversity of the Reserve's client base:

(1) N Schedule Clients — Public or private sector clients who have no connection to the Reserve and its mission.

(2) L Schedule Clients — Public or private sector clients who have limited connection to the Reserve and its mission.

(3) D Schedule Clients — Public or private sector clients who have a direct connection to the Reserve and its mission.

(4) E Schedule Clients — Exempt; fees can be waived at the discretion of SSNERR management for specific category of use or for certain public or private sector entities otherwise authorized by the SSNERR Manager, including but not limited to a cooperating association that has entered into an agreement with the Reserve, such as the Friends of South Slough, or a charity, social service group or other organizations with memoranda of understanding or reciprocal use agreements, cultural share groups.

(a) Eligibility of "E" schedule clients will be established via a written application process.

(b) "E" schedule governs the use of interpretive center classroom and auditorium during regular business hours (requiring simple set-up, self clean up and self-administrative support).

Stat. Auth.: ORS 273.554

Stats. Implemented: ORS 273.554(2)

Hist.: SSNER 1-2008, f. & cert. ef. 4-14-08

142-015-0040

Biennial Review of Fees

(1) By January 1 of each even-numbered year, the Reserve Manager must prepare a report and recommendations on fees to be considered by the Commission at its first meeting of that year. The report shall include:

(a) A report of the revenues earned from fees during the biennium ending on June 30 of the preceding odd-numbered year;

(b) A recommendation of any changes to the fee schedule for the next biennium beginning on July 1 of the even-numbered year;

(c) A projection of the anticipated revenues over the next two-year period based on the recommended fee schedule;

(d) An evaluation of the impact of the fees on participation in Reserve events; and

(e) Costs of implementing the fee schedule.

(2) At the first regular Commission meeting of each even-numbered year, the Commission shall review the report and adopt a new fee schedule.

Stat. Auth.: ORS 273.554

Stats. Implemented: ORS 273.554(2)

Hist.: SSNER 1-2008, f. & cert. ef. 4-14-08

142-015-0050

Addition of Fee for New Category

In the event the Reserve is requested to allow a usage or activity not anticipated at the time the Commission approves the schedule under OAR 142-015-0040, the Manager or the Operations Manager may establish a proposed fee and submit the fee to the Commission at its next regular meeting. The fee shall be based on the costs to the Reserve in sponsoring or carrying out the activity or usage and shall take into consideration the criteria set forth in OAR 142-015-0010(1). Upon approval by the Commission the fee shall be incorporated into the fee schedule.

Stat. Auth.: ORS 273.554

Stats. Implemented: ORS 273.554(2)

Hist.: SSNER 1-2008, f. & cert. ef. 4-14-08

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

Rule Caption: Clarifies Procedures and Requirements to Obtain Expedited Title Services From DMV.

Adm. Order No.: DMV 8-2008

Filed with Sec. of State: 3-21-2008

Certified to be Effective: 3-21-08

Notice Publication Date: 2-1-2008

Rules Amended: 735-028-0100

Subject: DMV has rewritten OAR 735-028-0100 to clarify language and correct the requirements for obtaining expedited title services. Text stating that a request for expedited services may be submitted in person to DMV Headquarters was removed because that is no longer correct. All requests for expedited title services must be submitted by mail to: Expedite Desk c/o DMV Headquarters, 1905 Lana Avenue NE, Salem, Oregon 97314.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-028-0100

Expedited Title Services

This rule establishes the procedures and requirements to obtain expedited title services from DMV under ORS 803.207.

(1) For purposes of ORS 803.207 and this rule, "expedited services" means a special service provided by DMV to priority-process a title transaction — when it is necessary — in order to comply with federal odometer disclosure requirements (odometer disclosure). Expedited services may include a registration transaction, if applicable.

(2) Expedited services are limited to title transactions that meet all of the following:

(a) There is a transfer of ownership interest in a vehicle that is subject to odometer disclosure (subject vehicle);

(b) The title is lost, destroyed or mutilated, or the assignments and odometer disclosures on the current Oregon title will not be accepted by an out-of-state purchaser's home jurisdiction; and

(c) A replacement or new Oregon title is needed as soon as possible in order to complete the required odometer disclosure.

(3) Examples of expedited services transactions include:

(a) When an Oregon vehicle dealer acquires a subject vehicle, the title is lost, destroyed or mutilated and a replacement title is necessary in order

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for the dealer to timely perfect a new security interest or timely provide a new title to a vehicle purchaser.

(b) When a non-Oregon resident purchases a subject vehicle in Oregon and is required to obtain an Oregon title in order to comply with the odometer disclosure requirements of the purchaser's home jurisdiction.

(4) To request expedited services, a person must mail the following to DMV:

(a) A written explanation signed by the person making the request that states why the transaction should be expedited and how the request relates to odometer disclosure requirements. This subsection does not apply to an Oregon certified vehicle dealer requesting expedited services;

(b) An application for title, an application for registration (if applicable), and any other required documents or fees; and

(c) An additional fee for expedited services established under ORS 803.207.

(5) A request under section (4) of this rule must be mailed to: Expedite Desk c/o DMV Headquarters, 1905 Lana Avenue NE, Salem, Oregon 97314.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.200, 803.015, 803.045, 803.050, 803.065, 803.092, 803.094, 803.097, 803.102, 803.120, 803.122, 803.124, 803.140, 803.207, 803.370, 805.120, 815.405, 821.060 and 821.080
Stats. Implemented: ORS 803.207
Hist.: MV 8-1992, f. 6-30-92, cert. ef. 7-1-92; DMV 8-2008, f. & cert. ef. 3-21-08

Rule Caption: CDL Waiver of Physical Disqualification for Intrastate Operations.

Adm. Order No.: DMV 9-2008

Filed with Sec. of State: 3-21-2008

Certified to be Effective: 3-21-08

Notice Publication Date: 2-1-2008

Rules Ren. & Amend: 740-100-0140 to 735-063-0070, 740-300-0140 to 735-063-0075

Subject: The Motor Carrier Transportation Division of the Oregon Department of Transportation previously issued a Waiver of Physical Disqualification which allows intrastate operation of commercial motor vehicles by a commercial driver license holder who is determined to be medically qualified under Oregon criteria. The responsibility for issuing these waivers was transferred to the Driver and Motor Vehicle Services Division of ODOT on October 1, 2007. These rule amendments were made in order to reflect the change.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-063-0070

Oregon Waiver of Physical Disqualification

(1) Possession of a Waiver of Physical Disqualification issued by DMV to the holder of a commercial driver license who only operates commercial motor vehicles in intrastate commerce is subject to the procedures, conditions and limitations set forth in this rule.

(2) Definitions:

(a) "Accident/conviction records" are records used to establish when a medical waiver issued by DMV may be denied or suspended. These include, but are not limited to DMV records, police reports, crash reports or other reports from motor carriers.

(b) "Conditions requiring waiver" are as provided in Title 49, CFR Sections 391.41 through 391.49;

(c) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation;

(d) "Waiver Guidelines" are those criteria maintained by, and available from, DMV as provided for by a licensed health care professional under contract with the Department of Transportation, the Medical Determination Officer or the State Health Officer.

(3) Waiver conditions and procedures include:

(a) When an intrastate driver of a commercial motor vehicle (CMV) does not qualify for a *Skill Performance Evaluation Certificate* or exemption pursuant to Title 49, CFR Sections 391.41 through 391.49 or Title 49 CFR Sections 381.300 to 381.330, the driver may make application to DMV for an Oregon Waiver of Physical Disqualification;

(b) Applications for waiver shall be accompanied by a completed waiver application form and other information as required by DMV, including a current USDOT physical examination form completed by a licensed health care professional;

(c) All waivers and requests for waivers shall be subject to review by a licensed health care professional under contract with the Department of Transportation, the Medical Determination Officer or the State Health Officer; and

(d) DMV may make an inquiry, review, or investigation of an applicant or current waiver holder's driving record, both commercial and non-commercial, at any time and it may use its findings as a basis for denial of a waiver or for suspension or permanent revocation of an existing waiver as specified in OAR 735-063-0075. Subject information shall include but not be limited to:

(A) Accident/conviction record;

(B) Crash information; and

(C) Any other information received regarding driving activities.

(e) If an inquiry, review or investigation of an applicant for, or current holder of, a driver's Waiver of Physical Disqualification is conducted under subsection (d) of this section and information is obtained that may be used as a basis for denial of waiver or for suspension or permanent revocation of an existing waiver, DMV may take action as follows:

(A) If no penalty order or cease and desist order has been entered against the applicant or current holder within the preceding five years for violations or other actions taken under subsection (d) of this section:

(i) When the record or other information being acted upon relates to non-commercial driving activities, DMV may deny or suspend an applicant's or holder's Waiver of Physical Disqualification for up to 180 days; and

(ii) When the record or other information being acted upon relates to commercial driving activities, denial or suspension of an applicant's or holder's Waiver of Physical Disqualification for up to one year.

(B) If a penalty order or cease and desist order has been entered against the applicant or current holder within the preceding five years for violations or other actions taken under subsection (d) of this section:

(i) When the record or other information being acted upon relates to non-commercial driving activities, DMV may deny or suspend a Waiver of Physical Disqualification for up to one year or permanently revoke or deny the Waiver of Physical Disqualification, as warranted by the circumstances of a particular case.

(ii) When the record or other information being acted upon relates to commercial driving activities, DMV may deny or suspend a Waiver of Physical Disqualification for up to two years or permanently deny or revoke the Waiver of Physical Disqualification, as warranted by the circumstances of a particular case.

(C) If a driver has been subject to action specified in subsection (d) of this section in the preceding 12 months:

(i) When the record or other information being acted upon relates to non-commercial driving activities, DMV may deny or suspend a Waiver of Physical Disqualification for up to five years or permanently deny or revoke the waiver as warranted by the circumstances of a particular case; and

(ii) When the record or other information being acted upon relates to commercial driving activities, DMV may permanently deny or revoke the Waiver of Physical Disqualification.

(4) Any driver issued a waiver shall:

(a) Notify DMV of any change in the driver's physical condition pertaining to the need for a waiver or any other condition which may require a waiver or waiver modification;

(b) Notify DMV of all crashes, arrests or convictions involving the use of a motor vehicle within 30 days of the crash or within 10 days of the arrest or conviction;

(c) Notify DMV of any suspension, revocation or withdrawal of driving privileges in a state other than Oregon;

(d) Notify DMV within 10 days of changing employers and provide the employer with a copy of the waiver;

(e) Carry a copy of the medical waiver and any listed waiver conditions at all times while operating a CMV and make the waiver and waiver conditions available to enforcement personnel upon request;

(f) Only operate a CMV in Oregon intrastate operations; and

(g) Comply with all of the waiver conditions.

(5) The waiver period shall not exceed the expiration date of the driver's medical certificate.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 807.040 & 807.150

Hist.: MCTB 4-2000, f. & cert. ef. 6-12-00; Renumbered from 740-100-0140, DMV 9-2007(Temp), f. & cert. ef. 9-17-07 thru 3-14-08; Renumbered from 740-100-0140, DMV 9-2008, f. & cert. ef. 3-21-08

735-063-0075

Suspension, Denial or Revocation of an Oregon Waiver of Physical Disqualification

(1) A holder of a Waiver of Physical Disqualification who violates any of the requirements set forth in OAR 735-063-0070(4), in addition to any

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other penalties authorized by law, shall be subject to suspension of the waiver for up to 180 days.

(2) DMV shall deny or revoke a Waiver of Physical Disqualification if DMV determines that applicant or holder does not qualify for the waiver.

Stat. Auth.: ORS 184.616, 184.619, 802.010
Stats. Implemented: ORS 807.040, 807.150
Hist.: MCTB 4-2000, f. & cert. ef. 6-12-00; MCTB 4-2001, f. & cert. ef. 11-9-01;
Renumbered from 740-300-0140, DMV 9-2007(Temp), f. & cert. ef. 9-17-07 thru 3-14-08;
Renumbered from 740-300-0140, DMV 9-2008, f. & cert. ef. 3-21-08

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**Department of Transportation,
Motor Carrier Transportation Division
Chapter 740**

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

Adm. Order No.: MCTD 1-2008

Filed with Sec. of State: 3-20-2008

Certified to be Effective: 4-1-08

Notice Publication Date: 2-1-2008

Rules Amended: 740-100-0010, 740-100-0060, 740-100-0070, 740-100-0080, 740-100-0090, 740-110-0010

Subject: These rules cover the annual adoption of federal motor carrier safety and hazardous material transportation regulations and the adoption of international standards related to driver, vehicle and hazardous materials out-of-service violations. The changes ensure Oregon's motor carrier safety; hazardous materials; driver, vehicle and hazardous materials out-of-service requirements are current with national and international standards. Amendments to the drivers' hours of service regulations were made to correct an oversight from a previous rulemaking that should have allowed intrastate drivers to use extended intrastate hours of service for sleeper berth operations and for the time card exception. A provision regarding utility service vehicle drivers was deleted, as it has recently been included in the federal regulations that are being adopted. Amendment related to medical waiver applications reflects transfer of that program to DMV.

Rules Coordinator: Lauri Kunze—(503) 986-3171

740-100-0010

Adoption of Federal Safety Regulations

(1) Except as provided in section (4) of this rule, the rules and regulations adopted by the United States Department of Transportation contained in Title 49, Code of Federal Regulations (CFR), Parts 380 (Special Training Requirements), 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards Requirements and Penalties), 385 (Safety Fitness Procedures), 387 (Minimum Levels of Financial Responsibility for Motor Carriers), 390 (Federal Motor Carrier Safety Regulations: General), 391 (Qualification of Drivers), 392 (Driving of Motor Vehicles), 393 (Parts and Accessories Necessary for Safe Operation), 395 (Hours of Service of Drivers), 396 (Inspection, Repair, and Maintenance), 398 (Transportation of Migrant Workers), 399 (Employee Safety and Health Standards), and all amendments thereto in effect April 1, 2008, are adopted and prescribed by the Department of Transportation (ODOT) to be observed by carriers conducting operations in interstate commerce, subject to ORS Chapter 825.

(2) The provisions of section (1) of this rule as adopted are prescribed by the Department to be observed by carriers conducting operations in intrastate commerce, subject to ORS Chapter 825, except:

(a) The provisions of Part 387 shall apply to intrastate motor carriers only when transporting hazardous materials, hazardous substances or hazardous wastes.

(b) With reference to Part 390.21, external identification requirements do not apply to vehicles with a gross combination weight rating of 26,000 pounds or less and operated exclusively in intrastate private carriage, except those vehicles transporting hazardous materials of a type or quantity requiring placarding or passenger vehicles with a seating capacity of more than 15 passengers including the driver.

(c) The rules in Part 391.11(b)(1) regarding the minimum age for a commercial motor vehicle operator do not apply to a driver engaged in intrastate commerce.

(d) The rules in Part 391 (except Part 391.11(b)(5), Valid Operator's License, and Part 391.15, Disqualification of Drivers) do not apply to a driver who is employed by a private carrier and does not transport hazardous materials of a type or quantity requiring the vehicle to be marked or placarded in accordance with Title 49, CFR, Part 177.823, and drives a motor vehicle with a gross vehicle or gross combination weight rating of 26,000 pounds or less.

(e) Notwithstanding Parts 391.41 to 391.49 (Subpart E — Physical Qualifications and Examinations) the Department may issue a waiver of physical disqualification to a commercial vehicle driver who has met the conditions established by the Driver and Motor Vehicle Services Division.

(f) With reference to Part 395.1(e), intrastate motor carriers transporting property may drive for a maximum of 12 hours following ten hours off duty;

(g) With reference to Part 395.1(g), intrastate motor carriers transporting property may drive for a maximum of 12 hours following ten hours off duty and may not drive after the 16th hour on duty;

(h) With reference to Part 395.3, motor carriers conducting intrastate transportation of property may not require or permit any driver used by it to drive a commercial motor vehicle, nor may any such driver:

(A) Exceed 12 hours driving following ten consecutive hours off-duty;

(B) Drive for any period beyond the 16th hour after coming on-duty following ten consecutive hours off-duty;

(C) Drive for any period following 70 hours on-duty in any seven consecutive days if the employing motor carrier does not operate commercial motor vehicles every day of the week, however, any period of seven consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours; or

(D) Drive for any period following 80 hours on-duty in any eight consecutive days if the employing motor carrier operates commercial motor vehicles every day of the week, however, any period of eight consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours.

(i) The provisions of subsections (f) through (h) of this section are not applicable to the transportation of hazardous materials of a type or quantity requiring placarding. Motor carriers transporting hazardous materials of a type or quantity requiring placarding must comply with Part 395.

(j) The provisions of Parts 396.17 through 396.23 (Periodic Inspection Requirements), are not applicable to operations conducted wholly in intrastate commerce.

(3) The provisions of Part 386.83(a)(1) and Part 386.84(a)(1), related to sanctions for failure to pay civil monetary penalties are adopted for operations conducted in intrastate commerce, and apply to penalties and sanctions found in ORS Chapter 825, pursuant to the provisions of ORS Chapter 183.

(4) The intracity operation exemption adopted by the US Department of Transportation found in Part 391.62 is not adopted and prescribed.

(5) Wherever reference is made in Title 49 of the CFR as adopted by this rule to a federal entity, including but not limited to "Federal Highway Administrator," "Regional Director," "Special Agent of the Federal Highway Administration" or the "Federal Motor Carrier Safety Administration," it shall be construed to mean the Oregon Department of Transportation or a person authorized by the Oregon Department of Transportation to act on its behalf.

(6) Copies of the federal regulations referred to in this rule are available from ODOT Motor Carrier Transportation Division or may be accessed on the Federal Motor Carrier Safety Administration website, www.fmcsa.dot.gov.

Stat. Auth.: ORS 823.011, 825.137, 825.210, 825.232 & 825.252
Stats. Implemented: ORS 825.210, 825.250 & 825.252
Hist.: PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); PUC 4-1979, f. & ef. 9-21-79 (Order No. 79-641); PUC 5-1979, f. & ef. 9-21-79 (Order No. 79-635); PUC 2-1980, f. & ef. 3-27-80 (Order No. 80-179); PUC 3-1980, Part 1, f. & ef. 6-30-80 (Order No. 79-805); Part 2, f. & ef. 6-30-80 (Order No. 80-475); PUC 7-1980, f. & ef. 11-6-80 (Order No. 80-845); Renumbered from 860-035-0010; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 12-1982(Temp), f. 12-20-82, ef. 1-1-83 (Order No. 82-872); PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); PUC 2-1983, f. & ef. 3-1-83 (Order No. 83-117); PUC 13-1984, f. & ef. 7-26-84 (Order No. 84-546); PUC 19-1984, f. & ef. 9-10-84 (Order No. 84-713); PUC 8-1985, f. & ef. 6-10-85 (Order No. 85-499); PUC 17-1986 (Temp), f. & ef. 12-3-86; (Order No. 86-1239); PUC 2-1987 (Temp), f. & ef. 2-25-87 (Order No. 87-248); PUC 4-1987, f. & ef. 6-9-87 (Order No. 87-509); PUC 16-1987(Temp), f. & ef. 12-11-87 (Order No. 87-1244); PUC 4-1988(Temp), f. & cert. ef. 2-12-88 (Order No. 88-161); PUC 6-1988(Temp), f. & cert. ef. 3-9-88 (Order No. 88-818); PUC 14-1988, f. & cert. ef. 7-22-88 (Order No. 88-245); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (and corrected 1-31-91) (Order No. 91-20); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 13-1992(Temp), f. & cert. ef. 9-4-92 (Order No. 92-1303); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-

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065-0010; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 5-1996, f. & cert. ef. 9-17-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCT 2-1997, f. & cert. ef. 5-9-97; MCT 6-1997, f. & cert. ef. 8-26-97; MCT 10-1997, f. & cert. ef. 12-22-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 2-1998, f. & cert. ef. 8-20-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 5-2005(Temp), f. 9-16-05, cert. ef. 10-1-05 thru 3-29-06; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08

740-100-0060

Operation of Motor Vehicles, Out-of-Service Conditions Prohibited

(1) No motor carrier shall permit or require any person to operate nor shall any person operate a motor vehicle over the public highways of the State of Oregon unless the vehicle is free from each defect listed in OAR 740-100-0070. (North American Standard Vehicle Out-of-Service Criteria.)

(2) In addition to the requirements of section (1) of this rule, a vehicle transporting hazardous materials shall be free from each defect listed in OAR 740-100-0080. (North American Standard Hazardous Material Out-of-Service Criteria.)

(3) Except as provided in section (4) of this rule, in addition to the requirements of sections (1) and (2) of this rule, no motor carrier shall permit or require the operation of a motor vehicle nor shall any driver operate a motor vehicle in violation of OAR 740-100-0090. (North American Standard Driver Out-of-Service Criteria.)

(4) No motor carrier engaged in intrastate transportation shall permit or require the operation of a motor vehicle nor shall any driver operate a motor vehicle in violation of OAR 740-100-0010(2)(f) through (i).

(5) Each defect which exists in each applicable standard shall be deemed a separate and distinct violation of this rule.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.210 & 825.252

Hist.: PUC 1-1987(Temp), f. & ef. 1-5-87 (Order No. 87-006); PUC 3-1987, f. & ef. 3-24-87 (Order No. 87-359); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1990, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0028; MCT 2-1997, f. & cert. ef. 5-9-97; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08

740-100-0070

North American Standard Vehicle Out-of-Service Criteria

(1) Appendix A of the North American Standard Vehicle Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2008, is adopted by and incorporated into this rule. Inspection violations identified in the chart may be subject to one or more of the following:

(a) Out-of-Service Condition: When any motor vehicle by reason of its mechanical condition or loading, is determined to be so unsafe as to likely cause an accident or breakdown, or when such conditions would likely contribute to loss of control of the vehicle by the driver, said vehicle shall be placed out-of-service. No motor carrier shall permit or require nor shall any person operate any motor vehicle declared and marked "out-of-service" until all required repairs of violations which resulted in the out-of-service condition have been completed. If, at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it shall be towed, transported, or escorted only at the direction of an official authority.

(b) Other: Violations other than out-of-service conditions detected during the inspection process will not preclude the completion of the current trip or dispatch. However, such violations must be corrected or repaired prior to redispach.

(2) Copies of Appendix A are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250 & 825.252

Hist.: PUC 3-1986, f. & ef. 4-18-86 (Order No. 86-372); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0030; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08

740-100-0080

North American Standard Hazardous Material Out-of-Service Criteria

(1) Appendix A of the North American Standard Vehicle Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2008, is adopted and incorporated in this rule. Inspection violations identified in the chart may be subject to out-of-service action. Condition(s) categorized in this Appendix as "Out-of-Service" shall not be allowed to continue in commerce until the condition(s) is/are corrected and the shipment complies with Title 49, CFR. If at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it shall be towed, transported, or escorted to a safe location only at the direction of an official authority.

(2) Copies of Appendix A are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250 & 825.252

Hist.: PUC 3-1986, f. & ef. 4-18-86 (Order No. 86-377); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0035; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08

740-100-0090

North American Standard Driver Out-of-Service Criteria

(1) Appendix A of the North American Standard Vehicle Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2008, is adopted and incorporated in this rule. Inspection violations identified in the chart may be subject to one or both of the following:

(a) Out-of-Service Violation: Drivers with violations under this category shall not operate a commercial motor vehicle for a specified period of time or for some violations until a required condition is met.

(b) Other: Violations other than out-of-service violations require no immediate action by the driver or motor carrier. The carrier must certify in accordance with the terms contained on the inspection document and return it to the Department of Transportation within 15 days.

(2) Copies of Appendix A are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250, 825.252 & 825.260

Hist.: PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0040; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08

740-110-0010

Adoption of United States Department of Transportation Hazardous Materials Regulations

(1) Any person subject to ORS Chapter 825 who transports a hazardous material and any person subject to ORS 823.061 who causes to be transported a hazardous material shall comply with the rules and regulations governing the transportation of hazardous materials as prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, Part 397 and such portions of Parts 107-178 and 180 as are applicable, and amendments thereto, in effect on April 1, 2008.

(2) Copies of the federal regulations referred to in this rule are available from ODOT, Motor Carrier Transportation Division or may be accessed on the Federal Motor Carrier Safety Administration website, www.fmcsa.dot.gov.

Stat. Auth.: ORS 823.011, 823.061 & 825.258

Stats. Implemented: ORS 825.258

Hist.: Refiled in PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 98, f. 1-18-61, ef. 1-12-61 (Order No. 37620); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 132, f. 3-29-65, ef. 4-1-65 (Order No. 41035); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 150, f. 11-7-68, ef. 12-1-68 (Order No. 45141); PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); PUC 2-1980, f. & ef. 3-27-80 (Order No. 80-179);

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PUC 3-1980, Part 1, f. & ef. 6-30-80 (Order No. 79-805); PUC 5-1980, f. & ef. 10-13-80 (Order No. 80-758); Renumbered from 860-036-0055; PUC 1-1981, f. & ef. 2-9-81; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 6-1982, f. & ef. 5-6-82 (Order No. 82-336); PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); PUC 1-1984, f. & ef. 2-9-84 (Order No. 84-076); PUC 13-1984, f. & ef. 7-26-84 (Order No. 84-546); PUC 8-1985, f. & ef. 6-10-85 (Order No. 85-499); PUC 7-1986(Temp), f. & ef. 7-25-86 (Order No. 86-736); PUC 13-1986, f. & ef. 10-30-86 (Order No. 86-1106); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 1-1996, f. 2-16-96, cert. ef. 4-1-96; Renumbered from 860-066-0055; MCT 3-1996, f. & cert. ef. 3-14-96; MCT 5-1996, f. & cert. ef. 9-17-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05; MCTD 2-2006, f. 3-17-06, cert. ef. 4-1-06; MCTD 1-2007, f. 3-26-07, cert. ef. 4-1-07; MCTD 1-2008, f. 3-20-08, cert. ef. 4-1-08

Department of Veterans' Affairs Chapter 274

Rule Caption: Updating Effective date of the Attorney General's Model Rules of Procedure Manual.

Adm. Order No.: DVA 5-2008

Filed with Sec. of State: 3-25-2008

Certified to be Effective: 3-25-08

Notice Publication Date: 3-1-2008

Rules Amended: 274-001-0005

Subject: The changes reflect the current Attorney general's Administrative Law manual and uniform and Model Rules of Procedure under the Administrative Procedures Act (Manual) which is dated January 1, 2008, and more specifically the rules contained in Appendix G of the Manual. This rule is also being amended to correct the references to the Department of Veterans Affairs' as established in HB 2932 of the 2005 Regular Session.

Rules Coordinator: Herbert D. Riley—(503) 373-2055

274-001-0005

Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Department of Veterans' Affairs adopts the Uniform and Model Rules of Procedure as contained in Appendix G of the "Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure" dated January 1, 2008. A copy of this manual is on file with the Department of Veterans' Affairs, 700 Summer Street NE, Salem, Oregon, and is available for public review Monday through Friday between the hours of 8 a.m. and 5 p.m.

[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 Department of Veterans' Affairs.]

Stat. Auth.: ORS 183.341 & 406.303

Stats. Implemented: ORS 183.341 & 406.030

Hist.: DVA 41, f. 12-1-71, ef. 12-15-71; DVA 43, f. 10-22-73, ef. 11-11-73; DVA 46, f. & ef. 4-20-76; DVA 1-1978, f. & ef. 4-20-78; DVA 2-1980, f. & ef. 5-16-80; DVA 9-1981, f. & ef. 11-19-81; DVA 12-1983, f. & ef. 10-7-83; DVA 3-1986, f. & ef. 2-18-86; DVA 5-1988, f. & cert. ef. 10-27-88; DVA 4-1990, f. 7-13-90, cert. ef. 8-20-90; DVA 8-1991, f. & cert. ef. 12-3-91; DVA 4-1996, f. & cert. ef. 7-22-96; DVA 4-1998, f. & cert. ef. 3-26-98; DVA 11-2000, f. & cert. ef. 12-14-00; DVA 1-2002, f. & cert. ef. 1-18-02; DVA 6-2004, f. & cert. ef. 4-16-04; DVA 7-2006, f. & cert. ef. 6-27-06; DVA 5-2008, f. & cert. ef. 3-25-08

Economic and Community Development Department Chapter 123

Rule Caption: Conform Distressed Area rules to the provisions of SB 350 (2007 Legislature) and to revised methodology.

Adm. Order No.: EDD 10-2008(Temp)

Filed with Sec. of State: 3-20-2008

Certified to be Effective: 3-20-08 thru 9-15-08

Notice Publication Date:

Rules Amended: 123-024-0001, 123-024-0011, 123-024-0031

Rules Suspended: 123-024-0041

Subject: The temporary rule implements the provisions of SB 350 (2007 Legislature) that became effective July 1, 2007 and conforms existing rule to legislation, as well as to the revised methodology to determine distressed areas.

Rules Coordinator: Janelle Lacefield—(503) 986-0036

123-024-0001

Scope and Purpose

In accordance with ORS 285A.020, the department shall give priority when providing funding for a project, a program or activity, to counties,

cities, communities or other geographic areas that are designated as distressed by the department. The designation of distressed areas must be based on indicators of economic distress, including but not limited to unemployment, poverty and job loss.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.020, 285A.075, 285B.062, 285B.065

Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 12-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; EDD 10-2008(Temp), f. & cert. ef. 3-20-08 thru 9-15-08

123-024-0011

Definitions

As used in this division of administrative rules, unless the context requires otherwise:

(1) "Department" means the State of Oregon Economic Development and Community Department as organized under ORS 285A.070.

(2) "Director" means the Director of the State of Oregon Economic and Community Development Department as appointed under ORS 285A.070.

(3) "City" means the area within the corporate limits or urban growth boundary, or both, of any incorporated city in Oregon.

(4) "Distressed area" means a geographic area within the state of Oregon that meets the criteria set forth under OAR 123-024-0031. All geographic areas within a county designated by the department as a distressed area shall be considered to be distressed areas.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.020, 285A.075, 285B.062, 285B.065

Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 12-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; EDD 10-2008(Temp), f. & cert. ef. 3-20-08 thru 9-15-08

123-024-0031

Methodology for Determining Distressed Areas

The department will consider a county, incorporated city, or other geographic area to be a distressed area if it is:

(1) A county whose average index of economic distress is less than 1.00, where the state's average index of economic distress equals 1.00, based on an average of several sub-index factors. The sub-index factors shall use data for the most recent year for which reliable data are available. The sub-index factors shall be:

(a) The county's unemployment rate divided by this state's unemployment rate;

(b) The county's per capita personal income divided by the state's per capita personal income;

(c) The change in the county's average covered payroll per worker over a two year period ;

(d) The sum of the change in the county's employment over a two year period ; or

(2) An incorporated city outside of the counties identified as distressed areas under subsection (1) of this section whose indicator values (see a) are below the threshold value in at least three of the four indicators.

(a) The four indicators shall be, where reliable data is available:

(A) Percent of city population of 25 years old with a bachelor's degree or higher;

(B) The city's unemployment rate;

(C) The percent of the city's population below the poverty level; and

(D) The city's per capita personal income.

(b) The threshold values for each of the four indicators in subsection (a) shall be determined by using reliable data from each of the distressed counties based on a demonstrated methodology, as approved by the director of the department; or

(3) A county, incorporated city, or other geographic area that has demonstrated in writing, to the satisfaction of the director of the department, that it is suffering or is likely to suffer economic distress equal to or greater than those counties and cities qualifying as distressed areas under subsections (1) and (2) of this section. The director shall have the authority to declare counties, cities, and other geographic areas distressed as allowed under this subsection.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.020, 285A.075, 285B.062, 285B.065

Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 3-2005(Temp), f. & cert. ef. 4-21-05 thru 10-15-05; Administrative correction 10-19-05; EDD 7-2005(Temp), f. & cert. ef. 10-24-05 thru 12-21-05; EDD 10-2005(Temp), f. & cert. ef. 11-4-05 thru 12-21-05; Administrative correction 1-19-06; EDD 12-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; EDD 10-2008(Temp), f. & cert. ef. 3-20-08 thru 9-15-08

123-024-0041

Priorities Based on Distressed Area List

The department will give highest funding priority to distressed areas that are designated in acknowledged local comprehensive plans as incorpo-

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rated cities, unincorporated areas within urban growth boundaries, or unincorporated communities described in OAR 660-022-0010(9).

Stat. Auth.: ORS 285A.075(5)
Stats. Implemented: ORS 285A.095, 285B.062 & 285B.065
Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; Suspended by EDD 12-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; Suspended by EDD 10-2008(Temp), f. & cert. ef. 3-20-08 thru 9-15-08

Rule Caption: Bring current rules into compliance with SB 350 from the 2007 Legislative Session.

Adm. Order No.: EDD 11-2008(Temp)

Filed with Sec. of State: 3-28-2008

Certified to be Effective: 3-28-08 thru 9-23-08

Notice Publication Date:

Rules Amended: 123-001-0050, 123-001-0300, 123-001-0500, 123-001-0520, 123-001-0700, 123-001-0725, 123-001-0750

Subject: Rules provide for (1) Commission's creation of ad hoc committees, including the Finance Committee and its functions; (2) Contested case proceedings for rejected applicants of certain programs; (3) The agency's administration processes, etc., due to the sunset of the Advanced Telecommunications Facilities Credit and Vertical Housing Development Zones.

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

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

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 make-up 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

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

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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

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

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

Rule Caption: Bring current rules into compliance with SB 350 from the 2007 Legislative session.

Adm. Order No.: EDD 12-2008(Temp)

Filed with Sec. of State: 3-28-2008

Certified to be Effective: 3-28-08 thru 9-23-08

Notice Publication Date:

Rules Amended: 123-009-0060, 123-009-0080, 123-009-0090

Subject: Rules provide the purpose of the Community Development Fund, as well as defining the Commission's responsibility in managing and allocating the fund.

Rules Coordinator: Janelle Lacefield—(503) 986-0036

ADMINISTRATIVE RULES

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

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

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

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Rule Caption: Bring current rules into compliance with SB 350 from the 2007 Legislative session.

Adm. Order No.: EDD 13-2008(Temp)

Filed with Sec. of State: 4-9-2008

Certified to be Effective: 4-9-08 thru 10-5-08

Notice Publication Date:

Rules Amended: 123-042-0020, 123-042-0026, 123-042-0036

Subject: These rules have been revised to meet the changes brought about by the 2007 Legislature (SB 350). Additional language has been added to better define grants, loans, project eligibility criteria and financing.

Rules Coordinator: Janelle Lacefield—(503) 986-0036

123-042-0020

Definitions

As used in this division of administrative rules, all capitalized terms have the meanings set forth below, unless the context clearly indicates otherwise.

(1) "Award" means the department's determination that the project is eligible for funding and that the department has identified the specified funding type and amount for the activities described in the staff recommendation.

(2) "Award Date" means the date of the final department management signature approving the award.

(3) "Department" means the Oregon Economic and Community Development Department.

(4) "Development project" means a project for the acquisition, improvement, construction, demolition, or redevelopment of municipally owned utilities, buildings, land, transportation facilities or other facilities that assist the economic and community development of the municipality, including planning project activities that are necessary or useful as determined by the Economic and Community Development Department.

(5) "Direct Project Management Costs" means expenses directly related to a project that are incurred by a municipality solely to support or manage a project eligible for assistance under ORS 285B.410 to 285B.482. "Direct Project Management Costs" does not include routine or ongoing expenses of the municipality.

(6) "Distressed Area" has the meaning given that term by ORS 285A.010(5).

(7) "Eligible Commercial Jobs" means jobs that are created or retained by businesses selling goods or services in markets for which national or international competition exists.

(8) "Eligible Commercial Jobs Project" means a project that creates or retains eligible commercial jobs.

(9) "Eligible Commercial Uses" means non-industrial activities by businesses selling goods or services in markets for which national or international competition exist or the promotion of downtown revitalization through improvements to municipally owned property that clearly serve to render a downtown area or main street more competitive or improve its economic vitality.

(10) "Emergency Project" means a development project resulting from an emergency as defined in ORS 401.025 to which federal disaster relief has been committed.

(11) "Essential Community Facilities" means only the following: city halls; city and county courts; county courthouses; community centers, including senior centers, youth centers, boys and girls club facilities, head start facilities and day care centers; domestic violence centers; emergency services buildings, including 911 facilities, ambulance facilities and fire stations; emergency shelters, including homeless shelters and shelters for people with disabilities; facilities for abused children; facilities for migrant farm workers; food banks; police stations; jails; juvenile justice centers; libraries; medical facilities, including public health clinics, drug and alcohol treatment facilities, mental health treatment facilities, and transitional housing for mentally ill persons.

(12) "Facility" means something that is built or installed to perform some particular function.

(13) "Firm Business Commitment" means a project in response to a specific business development, expansion or retention proposal where assistance is necessary to enable the proposal to proceed and where permanent, full-time equivalent jobs will be created or retained. The project shall support industrial development and be consistent with local comprehensive plans and implementing ordinances.

(14) "Fund" means the Special Public Works Fund created by ORS 285B.455.

(15) "Grant" means an award to a municipality of monies that can be used to reimburse eligible project costs. Grant funds are not required to be repaid when contract conditions are met.

(16) "Industrial Land" means a site of suitable size, type, location, and service level for a variety of industrial uses consistent with local comprehensive planning and zoning.

(17) "Industrial Land Development" means an activity undertaken for properly zoned parcels of land to prepare the sites for development or to make the land ready for use.

(18) "Industrial Site Certification" means an activity necessary or useful, as determined by the department, to the process of establishing and documenting the status of a site's readiness for industrial development.

(19) "Loan" means debt financing offered to a municipality.

(20) "Municipality" means an Oregon city, or county, the Port of Portland created by ORS 778.010, a county service district organized under ORS chapter 451, a district as defined in ORS 198.010, a tribal council of a federally recognized Indian tribe in this state, or an airport district organized under ORS 838, but does not include an ORS 190 entity.

(21) "Planning Project" means:

(a) A project related to a potential development project for preliminary, final or construction engineering;

(b) A survey, site investigation or environmental action related to a potential development project;

(c) A financial, technical or other feasibility report, study or plan related to a potential development project; or

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(d) An activity that the department determines to be necessary or useful in planning for a potential development project.

(22) "Project" means a development, planning or emergency project as defined by this section. When there is otherwise no specific reference to development, planning or emergency project, the reference shall include all project types.

(23) "Renewable Energy Feasibility Study" means an activity necessary or useful, as determined by the department, to determine the viability of a new development project that uses a renewable energy resource as defined in ORS 469.185(9)(a) for the purpose of generating electricity, heat or manufacturing a fuel.

(24) "Rural Area" has the meaning given that term in ORS 285A.010(7).

(25) "State Revenue Bonds" means revenue bonds issued by the State of Oregon at the request of the department that are payable from specific revenue sources pledged by a municipality and are not a pledge of the full faith and credit of the State of Oregon.

(26) "State Revenue Bond Loan" means a loan funded in whole or part through the sale of state revenue bonds.

(27) "Temporary project financing" means non-permanent financing, including short term and bridge financing used to finance eligible acquisition, pre-construction, and construction costs.

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 7-2001(Temp), f. & cert. ef. 11-6-01 thru 3-29-02; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 18-2004, f. & cert. ef. 8-2-04; EDD 10-2006, f. & cert. ef. 11-1-06; EDD 13-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08

123-042-0026

Loan and Grant Information

(1) The moneys in the fund shall be used primarily to provide loans to municipalities for projects. Grants shall be given only when loans are not feasible due to the financial need of the municipality or special circumstances of the project. The department is authorized to determine the level of loan or grant funding, if any, on a case-by case-basis. The department makes awards in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund; it shall determine the amount, type, interest rate, terms and conditions of an award; it may offer an alternate mix or lower amount of assistance than requested, and it may investigate and recommend other sources of funds for all or part of a proposed project. Not more than 100 percent of the total cost of any project, including capitalized interest, shall be financed from the fund. Maximum loan amount for a project will be based on the department's financial and credit analysis of the municipality's capacity to repay, the availability of moneys in the Fund, and prudent Fund management. Projects that the department determines are not financially feasible, or loans that cannot be adequately secured, will not be funded.

(2) Not less than 60 percent of the grants awarded from the Special Public Works Fund in any biennium shall be used to provide assistance to distressed or rural areas.

(3) The department may not expend more than \$900,000 for grants or direct assistance, if any, for planning projects to municipalities in a biennium.

(4) The department may provide take out financing of temporary project financing, including interim financing. When making an award to finance temporary project financing, all of the following apply:

(a) The municipality must receive an award for the refinancing before project construction begins;

(b) The department will offer loan only;

(c) The project must be municipally owned, or for the purpose of the municipality's acquisition of the project; and

(d) The municipality must be able to document to the department's satisfaction that it followed all applicable governing laws and regulations, including prevailing wage, procurement, or similar other requirements that would apply to the contracted project when using the Special Public Works Fund.

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; EDD 13-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08

123-042-0036

Development Project Eligibility, Criteria and Funding

(1) A development project, as defined in ORS 285B.410(3), can include the acquisition, improvement, construction, demolition or redevelopment of any of the following municipally owned and operated facilities:

(a) Transportation system projects, including roads, marine facilities, railroads, and airports;

(b) Utility system projects, including solid waste disposal sites; water, sewage, storm water drainage, energy, or telecommunications systems; or

(c) Buildings, land or other facility projects that assist the economic and community development of the municipality and can include planning project activities and financing costs associated with the development project.

(2) The department will apply the following priorities and criteria when determining development project eligibility:

(a) The department will give priority to projects that it determines will help create or retain permanent jobs.

(b) The municipality must document the economic and community development benefits of the project and the department must determine, that at a minimum, the project has a strong likelihood of creating construction jobs or otherwise promoting or contributing to economic and community development;

(c) The municipality must document substantial local commitment to the project's success; and

(d) The municipality must document how the benefits of the project will be preserved over the project life.

(3) In addition to the requirements in OAR 123-042-0036(2), the following specific types of development projects have additional criteria. If the project consists:

(a) Solely of the acquisition of land by the municipality, the land must be identified in the applicable land use or capital plan as necessary for a potential development project or be zoned solely for commercial or industrial use, and a loan for such a project must be repaid if the land that is acquired through the proceeds of the loan is rezoned so as to be no longer zoned for industrial or commercial use.

(b) Of a privately owned railroad, the railroad must be designated by the owner and operator as subject to abandonment within three years, pursuant to federal law governing abandonment of common carrier railroad lines.

(c) Of a telecommunications system, the governing body of the municipality shall adopt a resolution, after a public hearing, finding that the proposed telecommunications system project is necessary and would not otherwise be provided by a for-profit entity within a reasonable time and for a reasonable cost.

(d) Of an energy system, the municipality and the serving utility must execute an ownership and operating agreement for the proposed energy system project. This sub-section does not apply when the energy system project will be located within the recognized service territory of the municipality.

(e) Of a marine facility project authorized under ORS 777.267, assistance from the fund shall only be a loan that may not exceed the amount of the required local match.

(4) The department will apply the prioritization process as approved by Oregon Economic and Community Development Commission when determining whether to make an award for an eligible development project:

(a) The department will review project concepts and/or project information contained in the Project Intake Form.

(b) Proposed projects that it determines to be eligible, address the goals of the program and are determined to be a high priority, will be advanced to the next step. Proposed projects that are not advanced will be referred to other possible funding sources or for further project development.

(c) High priority projects will be funded on a funds available basis.

(5) A development project may receive loan funding as follows:

(a) The term is limited to the usable life of the contracted project, or 25 years from the year of project completion, whichever is less.

(b) The interest rate on a loan is based on market conditions for similar debt, and is set at the time of the award.

(c) The interest rate on a state revenue bond loan is equal to the coupon rates on the bonds. Until bonds are sold, the municipality will pay interest on loan funds drawn down at the rate established by the department.

(6) The maximum loan amount per project is \$9,000,000, of which not more than \$3,000,000 will be in the form of a direct loan. A direct loan is a loan that will not be placed in the Oregon Bond Bank. Awards for loan funding of \$3,000,000 and above must be approved by Oregon Economic and Community Development Commission.

(7) The loan shall be a full faith and credit obligation, which is payable from any taxes that the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. Additional pledges of revenue or

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other collateral may also be required and may include, but are not limited to:

(a) Specific revenues of the municipality may also be required to be pledged as security, including revenues of the project, special assessment revenues and other collateral.

(b) If repayment of the loan substantially depends on revenues the municipality will receive from a lessee or payments from a benefiting business, the department will assess the financial capacity of the payer, the adequacy of the security, the financial instrument(s) requiring such payment to the municipality, and any other liens, pledge(s), or assignments of collateral from the payer to the municipality. The department may require an assignment of such revenue and collateral from the municipality.

(c) If repayment of the loan substantially depends on a pledge of tax increment revenues from an urban renewal agency to the borrowing municipality, the department's financial analysis will extend to the financial feasibility of the projected revenues themselves and the financial and legal adequacy of the proposed pledge of tax increment revenue.

(8) The department may award temporary project financing. When making an award of temporary project financing, all of the following apply:

(a) The activity must be an eligible activity under these Division 42 rules;

(b) The award will consist of loan only, and will not exceed the cost of the project;

(c) The term of the loan cannot exceed 2.5 years (30 months) from the date the contract is executed; and

(d) The repayment terms of the loan can include deferred repayment of principal and/or interest for the term of the loan.

(9) A development project that qualifies as an eligible commercial jobs project or a firm business commitment project may be eligible to receive a grant. When making a determination to award a grant, the department will apply prudent fiscal management of the fund in order to manage constrained funding resources. In addition to the criteria and process contained in its policies on grant and loan funding, the department shall apply the following minimum criteria for grants:

(a) The department's financial analysis determines that the municipality's borrowing capacity is insufficient to support the amount of the loan requested for the project;

(b) Jobs will be created or retained as a result of the grant being awarded; and

(c) The department has received confirmation that the firm business commitment or the eligible commercial jobs project will not occur, or that the jobs will be lost, if the municipality does not receive a grant.

(10) If the department determines that the project meets the minimum criteria, the department will make a further determination on the amount of the grant. The maximum grant amount is \$500,000 per project or 85% of allowable project costs, whichever is less. The amount of grant will be based primarily on the number of jobs proposed to be created or retained with a maximum of \$5,000 for each job created or retained. The maximum grant amount will be awarded only in special circumstances as described in the department's adopted policy.

(11) If the grant is for the acquisition and improvement of real property, the maximum grant amount shall not exceed the fair market value of the real property after the improvements have been made or the value placed on the real property and improvements on the assessment rolls, whichever is less.

(12) The department shall receive in accordance with OAR chapter 123 division 70 a copy of the First Source Hiring Agreement or assurance from the municipality that one will be entered into before the grant is dispersed.

Stat. Auth.: ORS 285B.419, 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; EDD 13-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08

Rule Caption: Bring current rules into compliance with SB 350 from the 2007 Legislative session.

Adm. Order No.: EDD 14-2008(Temp)

Filed with Sec. of State: 4-9-2008

Certified to be Effective: 4-9-08 thru 10-5-08

Notice Publication Date:

Rules Amended: 123-043-0010, 123-043-0035, 123-043-0045, 123-043-0055, 123-043-0075

Subject: These rules have been revised to meet the changes brought about by the 2007 Legislative (SB 350). They clarify that the department will use the prioritization process to determine eligible devel-

opment projects. They also note that a registered professional engineer must certify in an engineering report that a project is feasible.

Rules Coordinator: Janelle Lacefield—(503) 986-0036

123-043-0010

Definitions

As used in this division of administrative rules, the following terms shall have the following meaning, unless the context clearly indicates otherwise:

(1) "DEQ" means the State of Oregon Department of Environmental Quality.

(2) "Department" means the State of Oregon Economic and Community Development Department.

(3) "Director" means the director of the department.

(4) "Facilities" means something that is built or installed to perform some particular function.

(5) "Fund" means the water fund created by ORS 285B.563.

(6) "Grant" means an award to a municipality of monies that can be used to reimburse eligible project costs. Grant funds are not required to be repaid when contract conditions are met.

(7) "Loan" means debt financing provided to a municipality for a project.

(8) "Municipality" means an entity defined in ORS 285B.560(4):

(a) Oregon City;

(b) Oregon County;

(c) District as defined in ORS 198.010;

(d) The Port of Portland created by ORS 778.010;

(e) County service district organized under ORS Chapter 451;

(f) Tribal council of a federally recognized Indian Tribe in Oregon; or

(g) Airport district organized under ORS Chapter 838.

(9) "Non-compliance" means the municipality has received a notice of non-compliance with:

(a) Drinking water quality standards administered by the Oregon Department of Human Services Public Health Services Drinking Water Program; or

(b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.

(10) "Project" means an activity that is eligible for assistance from the fund as defined in ORS 285B.560(5) and (6).

(11) "State Revenue Bond" means bonds issued by the State of Oregon that are payable from specific revenue sources and are not a pledge of the full faith and credit of the State of Oregon.

(12) "Distressed community" means a community or area identified as distressed by the department under the procedures implementing OAR chapter 123, division 24.

(13) "System" means the interconnected facilities that are required or useful for performing the required function.

(14) "Technical Assistance" means preliminary engineering or planning; legal, financial, and economic investigations, reports and studies to determine the feasibility of a project. Technical Assistance also means required Water Master Plans or Wastewater Facility Studies needed to allow communities to properly plan for the future.

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

Stat. Auth.: ORS 285B.563, 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 10-1993(Temp), f. & cert. ef. 10-4-93; EDD 7-1994, f. & cert. ef. 4-7-94; EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08

123-043-0035

Criteria and Limitations for Funding — Non-Technical Assistance Projects

(1) The intent of the Legislature was to provide funding to municipalities to assist in complying with the **Safe Drinking Water Act** and the **Clean Water Act**. Therefore, priority will be given to projects necessary to ensure that municipal water and wastewater systems comply with the requirements of:

(a) Drinking water quality standards administered by the Oregon Department of Human Services Public Health Services Drinking Water Program; or

(b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.

(2) If a municipal water or wastewater system has not been issued a notice of non-compliance by the governing regulatory authority, the department may determine that a proposed project is eligible for assistance upon a finding that one of the following has been met:

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(a) A recent letter has been issued by the appropriate regulatory authority, typically the Department of Human Services Drinking Water Program, DEQ, or its contracted agent, which indicates a high probability that the system owner will soon be notified of non-compliance with either the **Safe Drinking Water Act** or the **Clean Water Act**; or

(b) The department deems it reasonable and prudent that an award from the fund will assist in bringing the drinking water, storm water or wastewater system into compliance with the requirements of the **Safe Drinking Water Act**, the **Clean Water Act**, those requirements proposed to take effect within the next two years, or the requirements of other regulatory agencies recognized by the department as having responsibility for the protection of water quality and the supply of clean drinking water.

(3) The department generally will not award funds for any wastewater treatment facility that discharges into water quality limited streams for which DEQ has not yet established Total Maximum Daily Loads. The department will consult with DEQ to determine if the project can be designed and constructed without establishment of Total Maximum Daily Loads. Water quality limited streams are designated by the Oregon Environmental Quality Commission.

(4) The project must be consistent with the acknowledged local comprehensive plan.

(5) The department encourages regionalization whenever feasible.

(6) The department will apply the prioritization process as approved by the Oregon Economic and Community Development Commission when determining whether to make an award for an eligible development project:

(a) The department will review project concepts and/or project information contained in the Project Intake form.

(b) Proposed projects that it determines to be eligible, address the goals of the program and are determined to be a high priority, will be advanced to the next step. Proposed projects that are not advanced will be referred to other possible funding sources or for further project development.

(c) High priority projects will be funded on a funds available basis.

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

Stat. Auth.: ORS 285B.563, 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08

123-043-0045

Criteria and Limitations for Funding — Technical Assistance Projects

(1) Awards are available to municipalities with populations of less than 15,000 people for technical assistance. If the project is for a facility plan or study required by a regulatory agency, the municipality is not required to document non-compliance. Other Technical Assistance projects may be considered after consulting with the regulatory agency.

(2) Technical assistance grants and loans are subject to the following limitations:

(a) A grant of up to \$20,000 may be awarded for a project.

(b) A loan of up to \$20,000 may be awarded for a project. Interest shall be at 75 percent of the annual interest rate for other loans made in accordance with the requirements of this OAR chapter 123, division 43. The loan term shall not exceed seven years; and

(c) No more than \$600,000 shall be expended from the fund on technical assistance in any biennium. When awarding a grant under this OAR 123-043-0045 the department will not first consider a municipality's ability to repay a loan. The department may determine the need for a grant due to the "special circumstances" of the project.

(d) The application must meet the requirements listed in OAR 123-043-0075(2).

(3) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be pledged in addition to the foregoing.

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

Stat. Auth.: ORS 285B.563, 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08

123-043-0055

Loan and Grant Information

(1) The department may award financing in a manner that maximizes the use of available resources and maintains the desired credit standards of

the fund. The department shall determine the amount, type, interest rate and terms of any financing awarded. It may offer an alternate mix or lower amount of assistance than requested. The amount of the award may be the minimum amount that the department determines is necessary to enable the project to proceed, and the department may investigate and recommend other sources of funds for all or part of a proposed project. Projects that the department determines are not financially feasible will not be funded.

(2) Grants: When making a determination to award a grant, the department will apply prudent fiscal management of the fund in order to manage limited funding resources. In making its determination, the department shall, in addition to the criteria and procedures contained in the department's policies on grant and loan funding, apply the following criteria:

(a) The department's financial analysis determines that the municipality's financial resources, including its borrowing capacity, are insufficient to finance the project;

(b) If applicable, the projected annual residential utility rate for the system is at least equivalent to a minimum rate as determined by the department's policy. The department's policy incorporates the most recent U.S. Census data on median household income and annual adjustments for inflation since the most recent census; and

(c) If applicable, a grant would not cause the total amount of grants made by the department through all its programs to exceed \$10,000 per hookup per project.

(3) The department shall determine if the project meets the minimum criteria of a grant and make a determination on the amount of the grant based on financial need and other circumstances as described in the department's policies. A project in a distressed community may be eligible for a grant not to exceed \$750,000.

(4) Loans:

(a) The term of a loan is limited to the usable life of the contracted project, or 25 years from the year of project completion, whichever is less.

(b) Except as provided elsewhere in OAR chapter 123, division 43, the interest rate on a loan is based on market conditions for similar debt and is set at the time of the award.

(c) The interest rate on a bond funded loan is equal to the coupon rates on the state revenue bonds funding the loan. Until the state revenue bonds funding the loan are sold, the municipality will pay interest at a rate established by the department on loan funds disbursed to the municipality.

(d) Maximum amount for a loan for a project may be determined by the department on the basis of the department's financial analysis of the municipality's capacity for repaying the debt, the availability of moneys in the fund and prudent fund management as described in the department's adopted policies.

(5) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be required by the department to be pledged in addition to the foregoing.

Stat. Auth.: ORS 285B.563, 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08

123-043-0075

Application Review and Approval

(1) For a non-technical assistance project, the department must make the following determinations:

(a) The municipality shall document that a registered professional engineer has certified in an engineering report, such as a Master Plan, that the proposed project is feasible, is the most cost effective solution, and adequately serves the applicable land uses in both the short and long term;

(b) The loan is secured by the pledge of utility revenues or other revenues or payments from owners of specially benefited properties, and these revenues or payments are sufficient, when considered with other security, to assure repayment of the loan and the municipality has certified to the department that there will be adequate funds available to repay the loans made to the municipality from the fund;

(c) Moneys in the appropriate accounts of the fund are or will be available for the project;

(d) The municipality is willing and able to enter into a contract with the department;

(e) The project is consistent with the requirements governing assistance from the fund. If the Department determines that the municipality or

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the proposed project does not meet the requirements of this OAR 123-043-0075, the department may reject an application or require further documentation from the municipality; and

(f) The project is ready to begin and the municipality has committed in writing that, if awarded the assistance it shall proceed immediately.

(2) To award assistance from the fund for a technical assistance project, the department must make the following determinations:

(a) The technical assistance activities must be for a project that is eligible under OAR chapter 123, division 43 and meets the criteria listed in 123-043-0045; and

(b) The municipality has, or has demonstrated the ability to secure, the administrative capacity to undertake and complete the project.

Stat. Auth.: ORS 285B.563, 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08

Education and Workforce Policy Advisor, Office of Education and Workforce Policy Chapter 151

Rule Caption: Update and Amend Model Rules for Rulemaking, and Procedures for Resolving Non-Criminal Allegations against CCWD.

Adm. Order No.: EWP 1-2008

Filed with Sec. of State: 4-14-2008

Certified to be Effective: 4-14-08

Notice Publication Date: 3-1-2008

Rules Amended: 151-001-0005, 151-001-0010, 151-001-0015, 151-020-0045

Subject: Amends rulemaking rules of the Education and Workforce Policy Advisor by deleting unnecessary references, and adopts the January 1, 2006 version of the Attorney General's Model Rules of Procedure, in place of the 1997 version. Amends rules by clarifying procedures that apply to resolution of complaints against the Department of Community Colleges and Workforce Development, and incorporates time lines for resolution of complaints set by federal regulation.

Rules Coordinator: James Sagar—(503) 986-6545

151-001-0005

Model Rules of Procedure

Pursuant to ORS 183.341, the Education and Workforce Policy Advisor adopts the following Attorney General's Model Rules of Procedure under the Administrative Procedures Act as amended and effective January 1, 2006: OAR chapter 137, division 1; 137-003-0000 through 137-003-0092; OAR chapter 137, division 4; and chapter 137, division 5.

Stat. Auth.: ORS 285A.455

Stats. Implemented: ORS 285A.455

Hist.: EWP 1-2000(Temp), f. 6-30-00, cert. ef. 7-1-00 thru 12-27-00; EWP 3-2000, f. & cert. ef. 12-22-00; EWP 1-2007, f. & cert. ef. 12-13-07; EWP 1-2008, f. & cert. ef. 4-14-08

151-001-0010

Notice of Proposed Rule

Before permanently adopting, amending, or repealing any rule, the Education and Workforce Policy Advisor shall give notice of the proposed adoption, amendment, or repeal:

(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 a copy of the Notice to persons on the Education and Workforce Policy Advisor's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule;

(3) By mailing a copy of the Notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule; and

(4) By mailing or furnishing a copy of the Notice to:

- (a) The Associated Press; and
- (b) The Capitol Press Room;
- (c) Title IB Directors;
- (d) Area and Regional Board Staff;
- (e) Employment Department;
- (f) Adult and Family Services Division, DHS;
- (g) Vocational Rehabilitation Division, DHS;
- (h) Community Colleges and Workforce Development Department;
- (i) Rapid Response and Dislocated Worker Representatives;

(j) Department of Education.

Stat. Auth.: ORS 285A.455

Stats. Implemented: ORS 285A.455

Hist.: EWP 1-2000(Temp), f. 6-30-00, cert. ef. 7-1-00 thru 12-27-00; EWP 3-2000, f. & cert. ef. 12-22-00; EWP 2-2007(Temp), f. & cert. ef. 12-13-07 thru 6-6-08; EWP 1-2008, f. & cert. ef. 4-14-08

151-001-0015

Temporary Rulemaking Requirements

(1) If no notice has been provided before adoption of a temporary rule, the Education and Workforce Policy Advisor shall give notice of its temporary rulemaking to persons, entities, and media specified under ORS 183.335(1) by mailing or personally delivering to each of them a copy of the rule or rules as adopted and a copy of the statements required under ORS 183.335(5). If a temporary rule or rules are over ten pages in length, the agency may provide a summary and state how and where a copy of the rule or rules may be obtained. Failure to give this notice shall not affect the validity of any rule.

Stat. Auth.: ORS 285A.455

Stats. Implemented: ORS 285A.455

Hist.: EWP 1-2000(Temp), f. 6-30-00, cert. ef. 7-1-00 thru 12-27-00; EWP 3-2000, f. & cert. ef. 12-22-00; EWP 1-2008, f. & cert. ef. 4-14-08

151-020-0045

Procedure for Resolving a Non-Criminal Allegation of a Violation of the Act, Regulations, Grant or Other Agreement Under the Workforce Investment Act filed Directly Against the Department of Community Colleges and Workforce Development

(1) If there is a complaint against the Department (CCWD) and the complainant is a Local Workforce Area subrecipient, another grant recipient, or other entity receiving WIA funds directly from the Department, the initial complaint must be filed at the State level with CCWD. Complainants are entitled to an opportunity for informal resolution of the complaint and a contested case hearing.

(2) Both the informal resolution process and the contested case hearing must be completed within 60 days of receipt of a complaint.

(3) These procedures shall be used for the resolution of complaints arising from actions, such as audit disallowance or the imposition of sanctions, taken by the governor with respect to audit findings, investigations, or monitoring reports.

Stat. Auth.: ORS 285A.455

Stats. Implemented: ORS 285A.455

Hist.: EWP 3-2000, f. & cert. ef. 12-22-00; EWP 3-2007(Temp), f. & cert. ef. 12-13-07 thru 6-6-08; EWP 1-2008, f. & cert. ef. 4-14-08

Landscape Architect Board Chapter 804

Rule Caption: Resubmit rules relating to Fees, Civil Penalties, and Certificate of Authorization for Business.

Adm. Order No.: LAB 2-2008

Filed with Sec. of State: 3-20-2008

Certified to be Effective: 3-20-08

Notice Publication Date: 2-1-2008

Rules Amended: 804-030-0020, 804-035-0010, 804-040-0000

Subject: Two of the above rules are being resubmitted because they did not meet the 10-day window required by Legislative Council. The Board was notified of the deficiency in a letter received on December 13, 2007. In March of 2006, the Board submitted paperwork which include a fee for initial landscape Architect registration; an application fee for business registration, fee for a registrant list; and an increase in the annual renewal fee for Landscape Architects. The Board also revised the civil penalty language so it could assess less than the \$5,000 amount currently required by rule. This paperwork resubmits those rules with no changes.

In June of 2006, the Board finalized the rule regarding the Certificate of Authorization for Businesses which allowed businesses to provide updates to the Certificate within 60 days. In communication from Legislative Counsel on December 7, 2007, the Board was alerted that the enabling statute clearly sets the window of time at 30 days. This rule change is correcting the 60 day window to the statutory 30 day window.

Rules Coordinator: Susanna Knight—(503) 589-0093

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804-030-0020

Civil Penalties

Civil Penalties may be assessed up to \$5,000 for each offense. Such offenses include, but are not limited to:

(1) Unregistered individuals representing themselves as landscape architects.

(2) Registered landscape architects violating any of the provisions of ORS 671.310 through 671.459 or any rule adopted by the board.

Stat. Auth.: ORS 671.415, 671.950

Stats. Implemented: ORS 671.950

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 1-2006, f. & cert. ef. 3-17-06; LAB 2-2008, f. & cert. ef. 3-20-08

804-035-0010

Qualifications for a Certificate of Authorization for Business Providing Landscape Architecture Services

(1) A business formed for the purpose of offering to provide or providing landscape architectural services is required to obtain a certificate of authorization from the board.

(2) Each such business shall meet the following requirements:

(a) For purposes of ORS 671.318, an "officer" of the business means an individual employed by the business in Oregon and having the authority on behalf of the business to enter into contracts for landscape architectural services and to otherwise make decisions regarding the execution and outcome of such services.

(b) Each business shall designate one or more registered landscape architects as being in responsible charge of the landscape architectural services and decisions of the business. In the case of a business with multiple offices, each office in Oregon shall have a designated registered landscape architect in responsible charge of that office.

(c) Each landscape architect designated as being in responsible charge of the business's landscape architectural activities and decisions shall file an affidavit of responsibility with the board.

(3) Each certified business shall notify the board in writing within 30 days of any change in:

(a) Address;

(b) Business status;

(c) Officer status; or

(3) Status of the person or persons designated as being in responsible charge of the landscape architectural services and decisions of the business.

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.315

Hist.: LAB 2-1984, f. & ef. 5-1-84; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2006 f. & cert. ef. 6-26-06, Renumbered from 804-030-0011; LAB 2-2008, f. & cert. ef. 3-20-08

804-040-0000

Fees

The following are fees established by the board:

(1) Landscape Architect Registration Examination: an amount equal to the cost of purchasing the exam, or portions of the exam, from CLARB, plus the cost of postage, handling, examination site facilities and staff time for administration of the exam.

(2) Initial Landscape Architect registration: \$250.00.

(3) Initial Landscape Architect in Training registration: \$50.00.

(4) Registration renewal for Landscape Architect: \$250.00.

(5) Registration renewal for Landscape Architect in Training: \$50.00.

(6) Exam application fee (required to review qualifications to sit for each exam): \$50.00.

(7) Reciprocity application fee: \$100.00.

(8) Duplicate certificate: \$50.00.

(9) Late renewal fee: \$100.00: Lapsed Registration Fee to equal the full renewal fee plus late fee for each year the license has lapsed.

(10) Initial certification as an Authorized Business Entity in Landscape Architecture: \$225.00.

(11) Renewal fee for an Authorized Business Entity in Landscape Architecture: \$225.00.

(12) Emeritus Annual fee: \$25.00.

(13) Application fee for initial Landscape Architect registration: \$100.00.

(14) Application fee for business registration: \$100.00.

(15) Fee for registrant list: \$50.00.

Stat. Auth.: ORS 671.415

Stats. Implemented: ORS 671.365

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1983, f. & ef. 2-1-83; LAB 3-1983(Temp), f. 10-14-83, ef. 11-1-83; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1986, f. & ef. 3-5-86; LAB 1-1987, f. & ef. 1-5-87; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-

1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 1-1998, f. & cert. ef. 2-5-98; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-1999, f. & cert. ef. 10-22-99; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2005, f. & cert. ef. 5-18-05; LAB 1-2006, f. & cert. ef. 3-17-06; LAB 2-2008, f. & cert. ef. 3-20-08

Landscape Contractors Board Chapter 808

Rule Caption: Changes title of Landscape Contractor and Landscaping Business per HB 2117 (Oregon Laws 2007).

Adm. Order No.: LCB 3-2008

Filed with Sec. of State: 4-11-2008

Certified to be Effective: 4-11-08

Notice Publication Date: 11-1-2007

Rules Amended: 808-001-0020, 808-002-0220, 808-003-0015, 808-003-0018, 808-003-0035, 808-003-0040, 808-003-0130, 808-003-0230, 808-004-0120, 808-005-0020

Subject: Changes title of Landscape Contractor to Landscape Construction Professional and title of Landscaping Business to Landscape Contracting Business. This filing is correcting text errors made in earlier filings when old versions of the language were inadvertently filed.

Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909

808-001-0020

Charges for Documents; Refunds

(1) All requests for copies of public records pertaining to the State Landscape Contractors Board and available at the Board's office shall be in writing.

(2) Charges to the general public and to state agencies shall be payable in cash, check, money order, Visa or Mastercard unless billing to such agencies is authorized by the Administrator. Checks or money orders shall be made payable to the Landscape Contractors Board.

(3) The Board accepts Visa and Mastercard submitted in person or by mail, e-mail or fax. Any Visa or Mastercard that is rejected by the bank and requested to be confiscated will be retained and returned to the bank. All payments by Visa or Mastercard that are rejected must be paid in full by a check or money order within ten days from notification of rejection.

(4) Charges for copies, documents, and services shall be as follows:

(a) For machine copies requested by other state agencies and by the general public, twenty-five cents per image;

(b) \$20 for each certification that an entity has or has not been licensed with the Landscape Contractors Board.

(c) \$20 for certified copies of documents.

(d) \$100 for listing of individual landscape construction professional-contractors or landscape contracting businesses on CD or disk. Requests for searching or formatting the data will be billed as per subsection (e) of this rule. The Administrator may waive this charge for other public agencies.

(e) \$10 per half-hour unit or portion of a half-hour unit for research of records for each request from a person beginning with the 31st minute of research time;

(f) For both machine copies and documents, an additional amount set at the discretion of the Administrator for staff time required for search, handling, and copying.

(g) \$20 for duplicate tape recording of Board meetings.

(h) \$20 for duplicate tape recordings of a three hour agency hearing or arbitration and \$10 for each additional 90 minute or fraction thereof of the hearing or arbitration.

(i) Vehicle Stickers:

(A) Year stickers are \$.50 each;

(B) Set of stickers includes one year sticker and one license sticker and are \$1.00 per set.

(j) Plant CD:

(A) First copy is free to landscape construction professional application;

(B) \$5.00 (this includes shipping & handling).

(k) Landscape Construction book by David Sauter is the cost of the item, the cost of shipping and a fee for the cost of processing the order. Contact the State Landscape Contractors Board for the current charges.

(5) Refunds: All requests for refunds must be in writing.

(a) Except as set forth in subsection (b) of this section, applicant and licensing fees are non-refundable and nontransferable.

(b) When an applicant withdraws their renewal or fails to complete the renewal process the agency may retain a-processing fee of \$20. When

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an applicant withdraws their application for a landscape contracting business license or renewal or fails to complete the licensing process, the agency may retain a-processing fee of \$50.

(6) If the agency receives payment of any fees or penalty by check and the check is returned to the agency by the bank, the payer of the fees will be assessed a charge of \$25 in addition to the required payment of the fees or penalty.

(7) The agency shall not refund fees or civil penalties overpaid by an amount of \$20 or less unless requested by the payer in writing within three years after the date payment is received by the agency, as provided by ORS 293.445.

Stat. Auth.: ORS 183, 293.445, 671, Ch 541 OL 2007
Stats. Implemented: ORS 183, 192.430, 293.445 & 671
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1988(Temp), f. 3-17-88, cert. ef. 4-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 2-1999, f. & cert. ef. 5-4-99; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 4-2004(Temp), f. & cert. ef. 6-11-04 thru 12-6-04; LCB 5-2004, f. & cert. ef. 10-4-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 7-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08

808-002-0220

Claims

"Claims" as used in ORS 671.690 to 671.710 and in division 4 of this chapter are:

(1) "Breach of contract claim" means a claim for amounts due from a landscaping contracting business as a result of a breach of contract in performing work subject to ORS 671.510 to 671.710.

(2) "Material or equipment claim," means a claim for amounts due from a landscaping business for material or for renting or supplying equipment to a landscaping contracting business.

(3) "Employee claim" means a claim for unpaid wages or benefits filed by an employee of a landscaping contracting business or by the State of Oregon Bureau of Labor and Industries to collect unpaid wages from a landscaping contracting business for work done by the employee relating to the licensee's operation as a contractor under ORS chapter 671.

(4) "Negligent or improper work claim" means a claim for amounts due from a landscaping contracting business as a result of negligent or improper work subject to ORS 671.510 to 671.710.

(5) "State tax and contribution claim" means a claim filed by the State of Oregon for amounts due from a landscaping business for taxes and contributions due to the State of Oregon from a landscaping contracting business.

(6) "Subcontractor claim" is a claim filed by a subcontractor arising out of a contract between the subcontractor and a landscape contracting business for unpaid labor or materials furnished under the contract.

(7) "Lien Claim" means a claim filed by an owner against a landscape contracting business to discharge or to recoup funds expended in discharging a construction lien.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.510 - 671.720, Ch 541 OL 2007
Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2002, f. & cert. ef. 12-4-02; 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 6-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08

808-003-0015

Application for Landscape Contracting Business and Landscape Construction Professional License

(1) Application for a landscaping business license must be on forms provided by the agency. Information provided on the form must include, but not be limited to:

(a) Name of business entity, all additional assumed business names under which the landscaping business is conducted and Corporation Division registry numbers (if applicable). The business entity name and all assumed business names listed must be the same as what appears on record with the Corporation Division, if applicable;

(b) Mailing and location address of the business entity;

(c) Name of all owners and percent of ownership of each owner;

(d) Name and license number of all licensed landscape construction professionals employed by the business as required under ORS 671.565 along with a signed and notarized verification of employment form provided by the agency. A business may meet the requirements of ORS 671.565, notwithstanding the conditions or ORS 657.044, if the licensed landscape construction professional is a sole proprietor, a member of an LLC, a general partner in a partnership, or a stockholder of a Sub Chapter S-Corp and is actively involved in the landscaping business' operations and is receiving remuneration, whether by salary or other payment, for services provided.

(e) Independent contractor certification statement;

(f) A signed statement by the owner of the business, on which the landscaping business estimates the total maximum job charges for a single landscape job during the term of the license for the purpose of determining the correct bonding amount for that specific term of the license;

(g) List of all owners and percent of ownership of each owner;

(h) Social security number of the owner of a sole proprietorship or partners in a general partnership (where the partners are human beings);

(i) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and Oregon Law 2007, Chapter 151, Section 2, "applicant" has the same meaning as owner as defined in OAR 808-002-0734.

(j) Signature of owner, partner, joint venturer, corporate officer, member or trustee, signifying that the information provided in the application is true and correct.

(2) Application for a landscaping business license must be accompanied by:

(a) Required license fee;

(b) A properly executed surety bond, irrevocable letter of credit or deposit as required under ORS 671.690;

(c) A Certificate of Liability Insurance as required under ORS 671.565 for an amount not less than \$100,000 listing the Landscape Contractors Board as the certificate holder;

(d) Copies of the original and amended articles of incorporation for corporations, organizational filings for limited liability companies, and partnership agreements for partnerships; and

(e) A completed, signed and notarized Verification form (provided by the board) for every licensed landscape construction professional who is supervising work for the landscaping business as required in OAR 808-003-0018.

(3) Application for a landscape construction professional[contractor]license shall be on forms provided by the agency and shall be accompanied by:

(a) Required application and examination fees;

(b) Verification of experience and/or transcripts or copies of completion certificates from courses of study; and

(c) If applicable, name of employing licensed landscaping business or businesses.

(d) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and Oregon Law 2007, Chapter 151, Section 2, "applicant" means the person applying for the individual landscape construction professional license;

(e) Social security number of the applicant;

(f) Mailing address; and

(g) Signature of applicant.

(4) If an applicant as defined in subsections (1) and (3) of this rule has any unpaid damages as stated in subsections (1) and (3) of this rule and there are no appeals or exceptions filed, the applicant must show current payments are being made. If payments are not being made, the Landscape Contractors Board may refuse to issue the license.

(5) Application for a probationary landscape construction professional license shall be on forms provided by the agency and shall be accompanied by:

(a) A non-refundable application fee,

(b) An examination fee; and

(c) If applicable the name of the employing licensed landscape contracting business or businesses.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.560 & 671.565

Hist.: LC 3, f. & ef. 2-7-77; LC 3-1980, 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 808-010-0015; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-1999, f. & cert. ef. 11-17-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2005, f. & cert. ef. 10-5-05; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08

808-003-0018

Employment, Change of License Phase, Supervisory Responsibilities

(1) If a landscaping contracting business employs only one licensed landscape construction professional, that licensed landscape construction professional must hold a license covering each phase of landscaping work that the landscape contracting business offers and must be on the payroll

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each hour or meet the salary test for salaried, exempt employees during the time the landscape contracting business is performing landscape work related to the landscape construction professional's phase of license.

(2) If a landscape contracting business employs more than one licensed landscape construction professional[contractor]the combined licenses must cover each phase of landscape contracting that the business offers and the landscape construction professionals[contractors]must be on the payroll each hour or meet the salary test for salaried, exempt employees during the time the landscape contracting business is performing landscape work related to each landscape construction professionals phase of license.

(3) The licensed landscape construction professional who holds part or wholly the phase basis of the landscape contracting business license must perform the following supervisory services:

(a) Review and initial the landscape plan and written contract for each job;

(b) Attend all on-site meetings and appear at any hearings that are a consequence of any claims filed against the landscape contracting business that relate to the landscape construction professional's phase of license; and

(c) Directly supervise all non-licensed employees employed by the landscape contracting business as defined in OAR 808-002-0328.

(4) A landscape contracting business must require a licensed landscape construction professional to supervise the landscaping operation of the business and directly supervise the unlicensed employees of the landscape contracting business who are performing work related to the landscape construction professional's phase of license.

(5) Upon application for and before the renewal of a landscape contracting business license, and at any other time the board requests, a landscape contracting business must submit:

(a) A completed, signed and notarized Verification form (provided by the board) for every licensed landscape construction professional for whom the landscape contracting business has not previously submitted this Verification form and who is supervising work for the landscape contracting business;

(b) A copy of the landscape construction professionals current pay stub issued by the landscape contracting business if the landscape construction professional is a paid employee with the social security number and dollar amounts redacted or blackened out and

(c) A Verification form when a new individual landscape construction professional becomes part or the whole basis of the landscape contracting business license.

(6) The Verification form verifies that the licensed landscape construction professional:

(a) Is a paid employee of the landscape contracting business and is on the payroll each hour or meets the salary test for salaried, exempt employees or is an owner of the business as defined in OAR 808-002-0734 during the time the business is performing landscape work related to the landscape construction professional's phase of license;

(b) Will directly supervise work based on the landscape construction professional's phase of license;

(c) Will attend on site meetings and appear at any hearings that are a consequence of any claims filed against the landscape contracting business that relate to the landscape construction professional's phase of license; and

(d) Understands the requirement to notify the board within ten calendar days after termination of employment from the landscape contracting business.

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

Stats. Implemented: ORS 671.565

Hist.: LCB 2-1998, f. & cert. ef. 4-30-98; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 2-2006, f. 8-2-06, cert. ef. 10-2-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08

808-003-0035

License Categories

(1) Licenses may be issued only for the following:

(a) All Phase;

(b) Standard; or

(c) Irrigation and Backflow Prevention.

(d) Probationary All Phase Plus Backflow

(2) Except as set forth in section (3) of this rule, the following previously-issued limited licenses shall remain valid so long as the licensee continues to renew the license:

(a) Irrigation;

(b) Irrigation and Backflow Prevention;

(c) Sod & Seed; and

(d) Trees.

(3) The "All Phase" license shall include standard, irrigation, and Backflow Prevention, unless, in lieu of Backflow Prevention, the landscape construction professional has signed an agreement with the Board prior to April 30, 1996 stating that the contractor will not perform Backflow Prevention work, with the penalty for violation of the agreement being \$1,000 and suspension of the landscaping contracting business license and the landscape construction professionalcontractor license who is the phase basis of the landscaping contracting business.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.560

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0020; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 1-1994, f. 5-26-94, cert. ef. 6-1-94; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08

808-003-0040

Limitation of Service by License

(1) A licensed landscape contracting business shall perform only those phases of landscape work for which its owners or employees who are landscape construction professionals are licensed.

(2) The landscape work a licensed landscaping contracting business offers to perform shall be limited to the following:

(a) An all phase license holder is entitled to perform all areas of landscape work, plus the installation of backflow prevention assemblies unless, in lieu of Backflow Prevention, the landscape construction Professionalcontractor has signed an agreement with the Board prior to April 30, 1996 stating that the landscape construction professionalcontractor will not perform Backflow Prevention work;

(b) An irrigation; no backflow limited license holder may only perform irrigation functions;

(c) A sod and seed limited license holder may only perform grass seed planting or sod laying;

(d) A tree limited license holder may only install new or transplant trees;

(e) A standard limited license holder may perform all areas of landscape work except irrigation and the installation of backflow assemblies;

(f) An irrigation plus backflow limited license holder may perform only irrigation and the installation of backflow assemblies.

(g) A probationary All Phase Plus Backflow license holder may perform all areas of landscape contracting, provided all landscaping work on any given landscape job as defined in OAR 808-002-0495 must not exceed a total contract amount of \$15,000.

(h) If a landscape contracting business holds a probationary license and two or more claims are filed against the landscaping business within a 12 month period the owner or employee who holds the probationary license and is providing supervision as described in ORS 671.540(15) and (16) or 671.565(1)(b) may be required to take specific continued education hours (CEH) as required by the board that are related to the claim issues. Failure to complete the required CEH within the specified time frame may result, in addition to any civil penalties, revocation, refusal to renew or suspension of the probationary license of the landscape construction professional.

(3)(a) Tapping into the potable water supply and installation of irrigation or ornamental water feature backflow assemblies shall be done by plumbers licensed by the State Plumbers Board or by licensed landscape construction professionalcontractors who have been qualified by examination to install backflow assemblies and who are either employees or owners of landscaping contracting businesses. If the backflow assembly is installed by a landscape construction professionalcontractor, the landscape construction professionalcontractor or landscaping contracting business shall obtain all required permits and shall install the backflow assemblies in conformance with the permits;

(b) If a landscape construction professionalcontractor or landscaping contracting business fails to obtain permits to tap into the potable water system and install irrigation or ornamental water feature backflow assemblies or fails to comply with applicable code requirements, in addition to any other remedy, the Board may suspend, condition or revoke the landscape construction professional contractor or landscaping contracting business license.

Stat. Auth.: ORS 183.325 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 447.060 & 671.560

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0021; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 7-2003(Temp), f. 11-28-03, cert. ef. 12-1-03 thru 5-29-04;

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LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08

808-003-0130

Fees

- (1) Initial license or renewal of active license
 - (a) Landscaping contracting business, \$225.
 - (b) Landscape construction professional contractor, \$75.
- (2) Renewal of inactive license
 - (a) Landscaping contracting business, \$225.
 - (b) Landscape construction professional contractor, \$75.
- (3) Late penalty fee:
 - (a) Landscaping contracting business, \$25.
 - (b) Landscape construction professional contractor, \$25
- (4) Individual Landscape Construction Professional Contractor

License Application fee: \$60.

- (5) Initial examination fee for any phase of license is:
 - (a) \$15 for first section of the exam; and
 - (b) \$10 for each additional section per exam sitting.
- (6) Exam retake fees for any section of the exam is:
 - (a) \$15 for first section of the exam; and
 - (b) \$10 for each additional section per exam sitting.
- (7) Exams sent to the DMV, additional processing and mailing fee:

\$12.

- (8) Examination, failure to show for a scheduled appointment:
 - (a) In Board office, \$20 without a 24 hour advance cancellation notice to the Board office.
 - (b) At Proctor Exam Site, forfeits full payment for that exam sitting.
- (9) Landscape Contracting Business License Application fee: \$75.
- (10) Probationary Individual Landscape Construction Professional

License Application: \$50

- (11) Initial examination fee for owner or managing employee: \$30.
- (12) Examination retake fee for owner or managing employee: \$15.
- (13) If a landscape construction professional contractor license expires, the amount to be paid for reinstatement equals the required fee for each year of lapse (up to two years) plus a late penalty fee for each year.

(14) If a landscaping contracting business license expires, and the landscaping contracting business has continuously maintained its bond, the amount to be paid for reinstatement equals the required fee for each year of lapse (up to two years) plus a late penalty fee for each year. The reinstatement will be retroactive to the expiration date.

(15) If a landscaping contracting business license expires, and the landscaping contracting business has continuously maintained its bond, irrevocable letter of credit or deposit together with required liability insurance, the amount to be paid for reinstatement equals the required fee for each year of expiration (up to two years) plus a late penalty fee for each year. The reinstatement will be retroactive to the expiration date.

(16) If a landscaping contracting business license expires, and no bond, irrevocable letter of credit or deposit, or required liability insurance, has been in effect during the interim, the amount to be paid for reinstatement equals the required fee for each year of expiration (up to two years) plus a late penalty fee for each year. The reinstatement date will be the date the required fee and documentation are received in the board office.

(17) Payments received after board deadlines, including, but not limited to payments for renewals, applications and civil penalties will be considered late and penalties shall be assessed.

(18) The board may waive the late fee if:

(a) The properly completed renewal form and correct fee are received by the agency prior to the expiration date and all other renewal requirements are met within one month after the expiration date; or

(b) The licensee's failure to meet the renewal date was caused entirely or in part by an board error or omission.

(19) The board may waive the failure to show for a scheduled examination appointment fee for good cause. Documentation may be required.

Stat. Auth.: ORS 183.310 - 183.545, 670.310 & 671.670

Stats. Implemented: ORS 671.650 & 671.660, OL 2007, Ch. 249

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1983(Temp), f. 10-14-83, ef. 10-15-83; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0035; LCB 3-1988(Temp), f. 4-11-88, cert. ef. 5-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LCB 1-1989(Temp), f. 5-16-89, cert. ef. 7-1-89; LCB 2-1989, f. & cert. ef. 7-24-89; LSCB 1-1995, f. & cert. ef. 2-2-95; LSCB 1-1997(Temp), f. & cert. ef. 6-10-97; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-2002, f. & cert. ef. 7-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 5-2004, f. & cert. ef. 10-4-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 7-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08

808-003-0230

Renewal of Landscaping Contracting business and Landscape Construction Professional License

(1) Application for renewal of a landscaping contracting business license shall be on forms provided by the agency and shall be accompanied by:

- (a) Required renewal fee;
- (b) Proof of surety bond, irrevocable letter of credit or deposit as required under ORS 671.690;
- (c) Certificate of Liability Insurance as required under ORS 671.565 for an amount not less than \$100,000 listing the Landscape Contractors Board as the certificate holder;
- (d) List of licensed landscape construction professional contractors, with accompanying license numbers, employed by the business as required under ORS 671.565;

(e) A signed statement by the owner of the business, on which the landscaping contracting business estimates the total maximum job charges for a single landscape job during the term of the license for the purpose of determining the correct bonding amount for that specific term of the license; and

- (f) List of all owners and percent ownership of each owner;
- (g) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and Oregon Law 2007, Chapter 151, Section 2, "applicant" has the same meaning as owner as defined in OAR 808-002-0734.

(2) Application for renewal of a landscape construction professional license shall be on forms provided by the agency and shall be accompanied by:

- (a) Required renewal fee;
- (b) If applicable, name of employing licensed landscaping business or businesses; ;

(c) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and Oregon Law 2007, Chapter 151, Section 2, "applicant" means the person applying for the individual landscape construction professional license;

- (e) Social security number of the applicant;
- (f) Mailing address; and
- (g) Signature of applicant.

(3) If an applicant as defined in subsections (1) and (2) of this rule has any unpaid damages as stated in subsections (1) and (2) of this rule and there are no appeals or exceptions filed, the applicant must show current payments are being made. If payments are not being made, the Landscape Contractors Board may refuse to renew the license.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.565 & Ch. 609, OL 2005

Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 10-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08

808-004-0120

Liability of Landscape Contracting Business

A licensed landscape contracting business participating in a corporation wholly-owned by the landscape contracting business, or a limited liability partnership, limited liability company, joint venture, limited partnership or partnership, may be held liable for claim actions brought under ORS 671.690 to 671.710, whether or not the corporation, limited liability partnership, limited liability company, joint venture, limited partnership or partnership was licensed as required by ORS chapter 671.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671

Stats. Implemented: ORS 671.

Hist.: LCB 4-2002, f. & cert. ef. 12-4-02; LCB 3-2006, f. & cert. ef. 8-2-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08

808-005-0020

Schedule of Civil Penalties

The board may assess civil penalties according to the following schedule, which may be adjusted per the terms of a settlement agreement:

(1) For operating as a landscape contracting business in violation of ORS 671.530(1) or (3), \$1,000.

(2) For operating as a landscape contracting business in violation of ORS 671.530(1) or (3), when a claim has been filed for damages arising out of that work, \$2,000.

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(3) For operating as a landscape contracting business in violation of ORS 671.530(1) or (3) when one or more previous violations have occurred, \$2,000.

(4) For advertising in violation of ORS 671.530(2), or (5), \$600.

(5) For advertising in violation of ORS 671.530(2), or (5) when one or more previous violations have occurred, \$1,000.

(6) For advertising outside the scope of the landscape contracting business license in violation of OAR 808-003-0040, \$500.

(7) For operating as a landscape contracting business without employing at least one licensed landscape construction professional licensed within the phase of work performed, in violation of OAR 808-003-0040 and 808-003-0045, \$500.

(8) For performing landscaping work while not subject to a written contract, in violation of ORS 671.625(2) and OAR 808-002-0020:

(a) \$200 for the first; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(9) For failure to include the license number in all written advertising, in violation of OAR 808-003-0010:

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(10) For performing work outside the scope of the landscape contracting business license in violation of OAR 808-003-0040, \$500.

(11) For installation of an irrigation backflow assembly or tapping into the potable water supply in violation of a written agreement with the Board as provided in OAR 808-003-0040, \$1,000 and suspension of the license until Backflow Prevention license is obtained.

(12) For failure to maintain the insurance required by ORS 671.565 or bond as required by ORS 671.690 in effect continuously throughout the license period, \$500.

(13) For failure to maintain the insurance required by ORS 671.565 in effect continuously throughout the license period, if the licensee, in performance of work subject to ORS 671.510 to 671.710, causes damage to another entity or to the property of another person for which that entity or person could have been compensated by an insurance company had the required insurance been in effect, \$2,000, in addition to such other action as may be authorized by statute.

(14) Failure to conform to information provided on the application in violation of ORS 671.510 to 671.710, \$1,000 and suspension of the license until the applicant provides the agency with proof of conformance with the application.

(15) Failure to comply with any part of ORS Chapters 316, 656, 657, and 671, as authorized by ORS 671.510 to 671.710, \$1,000 and suspension of the license until the applicant provides the agency with proof of compliance with the statutes.

(16) Violating an order to stop work as authorized by ORS 671.510 to 671.710, \$1,000 per day.

(17) For failure to obtain a permit to tap into a potable water supply prior to the installation of an irrigation backflow assembly or failure to comply with applicable plumbing code requirements as required by OAR 808-003-0040(3)(a), \$500.

(18) Failure to obtain the appropriate building code permit(s), \$500.

(19) When as set forth in ORS 671.610(5), the number of licensed landscape contracting businesses working together on the same task on the same job site, where one of the businesses is licensed exempt under ORS 671.525(2)(b), exceeded two sole proprietors, one partnership, one corporation, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows:

(a) \$1,000 for the first offense;

(b) \$2,000 for the second offense;

(c) Six month suspension of the license for the third offense; and

(d) Three-year revocation of license for a fourth offense.

(20) Failure of a landscape contracting business to notify the board of a change in the landscaping business' phase of license as required by OAR 808-003-0045(4), \$500.

(21) Failure by the landscape contracting business to provide a signed Verification of Employment form with the application or notification of new employment of a landscape construction professional, refuse to issue or renew or the suspension of the license until the agency receives the Verification of Employment form.

(22) Failure by the landscape construction professional/contractor to comply with the supervisory responsibilities as required by OAR 808-003-0018;

(a) \$200 for the first offense;

(b) \$500 for the second offense occurring after action taken on first offense; and

(c) \$1,000 and six month suspension of the license for the third offense.

(23) Failure of the landscape construction professional contractor to notify the Landscape Contractors Board of a change of address or employment in writing or on line at the LCB website as required by ORS 671.603 and OAR 808-003-0045, \$200.

(24) Failure of a landscape contracting business to notify the board of a change in address in writing or on line at the LCB website as required by ORS 671.603, \$200

(25) Failure of a landscape contracting business to require the landscape construction professional to directly supervise unlicensed employees of the landscaping business performing landscaping work that is related to the landscape construction professionals[contractors]phase of license, \$500.

(26) Failure of a landscape contracting business to obtain the correct amount of surety bond or irrevocable letter of credit, as required by ORS 671.690(1),:

(a) \$500 for the first offense and immediate suspension per ORS 671.610(2) until the proper bond is received in the State Landscape Contractors Board office;

(b) \$1,000 for the second offense occurring after action taken on the first offense and immediate suspension per ORS 671.610(2) until the proper bond is received in the State Landscape Contractors Board office.

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

Stats. Implemented: ORS 671.720

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 2-2005, f. & cert. ef. 4-5-05; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 7-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08

Office of Private Health Partnerships Chapter 442

Rule Caption: Gives FHIAP the ability to terminate members when projected program costs exceed available funds.

Adm. Order No.: OPHP 1-2008(Temp)

Filed with Sec. of State: 3-31-2008

Certified to be Effective: 3-31-08 thru 9-26-08

Notice Publication Date:

Rules Amended: 442-005-0270

Subject: FHIAP is amending 442-005-0270 to allow termination of enrollees in order to reduce membership to a level that can be supported by projected funds. Effective November 1, 2007, FHIAP lost the ability to use SCHIP matching funds (Title XXI) for adults in the FHIAP program. Although, the centers for Medicare and Medicaid Services (CMS) is allowing use of title XIX (Medicaid) funds for this population, the impact of the policy change is a decrease in the federal match rate. Title XIX rates are approximately 12 percent lower than Title XXI match rates creating a projected shortfall of \$5.6 million in General Fund. FHIAP must disenroll adults in the program until the required reduction is reached.

Rules Coordinator: Cindy Bowman—(503) 378-4674

442-005-0270

Termination of Subsidy

Termination from the FHIAP program occurs when:

(1) Payment of the member's share of the insurance premium is not postmarked by the date stipulated in correspondence from FHIAP;

(2) The member is no longer a resident of Oregon;

(3) The member terminates or is terminated from the member's health benefit plan and fails to notify FHIAP;

(4) The insurance plan that covers an eligible child of any member terminates or is terminated, and the member does not replace the eligible child's health insurance within 120 calendar days from the date FHIAP notifies the member to replace the child's coverage.

(5) The member is determined to be ineligible at reapplication or any time during the subsidy year. Ineligibility results if:

(a) A member is eligible for or receiving Medicare on or before the date the application was signed. Subsidy may remain in force for the

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remainder of the applicant's 12-month eligibility period if the applicant became eligible for Medicare after signing the application.

(b) A member is incarcerated beyond 30 continuous calendar days.

(c) Any member is enrolled in OHP and FHIAP simultaneously and fails to timely terminate from one program after being notified by FHIAP that they must do so.

(d) Any information submitted is inconsistent and does not allow for eligibility determination.

(e) FHIAP staff makes an administrative error when determining eligibility and the applicant should have been denied and error is identified during an audit of the member's file.

(f) An applicant or member in the individual market becomes eligible for a benchmark-approved group plan with an employer contribution and doesn't enroll within 30 days of the first opportunity of enrollment in the group plan.

(g) The member failed to submit required or requested information or submitted inadequate or unclear information such that FHIAP cannot make an eligibility determination.

(6) In the group market, the member fails to provide monthly verification of coverage, premiums, and employer contribution within 30 days from the date FHIAP requests such documentation.

(7) The member fails to pay an overpayment amount as per OAR 442-005-0280.

(8) The member fails to return their reapplication within 45 days from the date it was mailed to them.

(9) A member is found to have committed misrepresentation on the FHIAP application. If a civil penalty is imposed, the member is ineligible to enroll or re-enroll in FHIAP.

(10) Projected program costs exceed the funding available to cover subsidy payments for those enrolled.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; OPHP 1-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08

Oregon Department of Education Chapter 581

Rule Caption: Changes rate of calculation for nonreimbursable expenses for purposes of school district transportation costs.

Adm. Order No.: ODE 8-2008

Filed with Sec. of State: 3-21-2008

Certified to be Effective: 3-21-08

Notice Publication Date: 1-1-2008

Rules Amended: 581-023-0040

Subject: Specifies nonreimbursable transportation costs for school districts for the 2007–2008 and 2008–2009 school year. Nonreimbursable transportation costs are used to calculate the transportation grant that school districts receive from the State School Fund. The costs were adjusted based on the Consumer Price Index for Portland. Specifies that for purposes of computing approved transportation costs depreciation of buses will be allowed only for buses that are used at least 50 percent for reimbursable mileage.

Rules Coordinator: Paula Merritt—(503) 947-5746

581-023-0040

Approved Transportation Costs for Payments from the State School Fund

(1) Definitions for the purpose of this rule:

(a) "Elementary School Student" means, notwithstanding any other OAR or statute, pupils attending a school offering only an elementary curriculum, any combination of grades K through 8;

(b) "Secondary School Student" means, notwithstanding any other OAR or statute, pupils attending a school offering any secondary curriculum for grades 9, 10, 11, or 12. Additionally, all students attending a school designated by the local school board through board action as a junior high school or middle school may be considered secondary students;

(c) "Mile(s) from School" means the distance a student lives from school, measured from the closest, reasonable, and prudent point between the school property identified by the local board for that pupil's attendance and the property where the pupil lives. The distance will be measured over the shortest practicable route on maintained public roadways or over existing pedestrian facilities or pedestrian facilities capable of meeting the requirements listed in ORS 332.405(4);

(d) "Supplemental Plan" means a plan adopted by local school board resolution identifying groups or categories of students who live within the 1 and 1.5 mile limitations and require transportation based on health or safety reasons, including special education. Supplemental plan approvals may be ordered by the State Board of Education or its designated representatives. The State Board shall have the right of final review of any actions regarding supplemental plans. Appeals will be directed to the State Board for final consideration. The Plan must include the following:

(A) The approximate number of students to be transported based on the plan;

(B) The health or safety reasons cited for providing transportation;

(C) The local board resolution specifying the supplemental plan as submitted; and

(D) Any additional information or documentation supporting the supplemental plan deemed appropriate locally.

(e) "Local School Board" means, notwithstanding any other OAR or statute, the local school board for the district in which the student's legal residence is physically located. Local school boards are not required to provide transportation for students who have requested and received approval to attend a school other than that designated by the local school board for students living in their specified attendance area;

(f) "Bus Manufacturer's Rated Capacity" means the number of students to be used in the calculations specified in paragraph (5)(n)(B) of this rule and described below:

(A) Buses transporting only elementary students will have a passenger capacity as stated on the manufacturer's identification plate;

(B) Buses transporting only high school students, grades 9 through 12 will have a passenger capacity based on two students for each 39 inch bus seat;

(C) Buses transporting mixed groups from grades K-12 (in any combination) or groups of only junior high or middle school students will have a passenger capacity based on 2.5 students for each 39-inch bus seat.

EXAMPLE: A bus with a manufacturer's passenger capacity stated on the identification plate of 72 would have the following ratings: elementary — 72, high school only — 48, mixed groups — 60, middle school and junior high school — 60.

(2) Approved transportation costs shall include those costs incurred in transporting pupils to and from instructional programs during the regularly scheduled school term within the limitations specified by ORS 327.006 and 327.033. Approved transportation costs may include costs incurred in transporting students participating in extended school year programs eligible for funding from the State School Fund.

(3) Approved transportation costs shall include those district expenditures associated with:

(a) Home-to-school transportation of elementary school pupils who live at least one mile from school;

(b) Home-to-school transportation of secondary school pupils who live at least one and one-half miles from school;

(c) Transportation of pupils between educational facilities either within or across district boundaries, if the facilities are used as part of the regularly-scheduled instructional program approved by the Board;

(d) Transportation of pupils for in-state field trips when such represents an extension of classroom activities for instructional purposes, and shall include out-of-state destinations within 100 miles of the Oregon border;

(e) Transportation of pupils home to school for whom a supplemental plan has been approved by the State Board of Education in addressing safety, health, and special education needs;

(f) Transportation of preschool children in Early Childhood Special Education Services having an Individual Family Service Plan requiring transportation and preschool children receiving Early Intervention Services under the authority of ORS 343.533.

(g) School to home transportation following extended school day instructional programs for:

(A) Elementary school pupils who live at least one mile from school;

(B) Secondary school pupils who live at least one and one-half miles from school.

(4) Approved transportation costs shall exclude those district expenditures associated with transportation for the following unless the school program is required under provisions of the Individuals with Disabilities Education Act, ORS 343.533 or 339.010 through 339.090 and 339.250:

(a) Pupils living within the limits prescribed in ORS 327.006(2) for whom no supplemental plan has been approved by the State Board;

(b) Activity trips other than for instructional purposes;

(c) Athletic trips;

(d) School lunch purposes;

(e) Summer school;

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(k) Depreciation. For purposes of computing depreciation, capitalized cost is defined to include the unit cost of the asset, exclusive of interest, for such assets purchased outright, by conventional contract, or by lease-purchase agreement if such agreement contains any provision to acquire ownership at the end of the agreement by application of a portion of the rentals paid or a terminal payment. The computation of the capitalized cost and the depreciation shall be according to the following:

(A) Portions of Garages and Other Buildings Used for Approved Pupil Transportation:

(i) Outright purchase (including purchase by conventional contract). For each outright purchase or purchase by conventional contract, each district shall report to the Oregon Department of Education, on the forms provided, the unit cost of the garage or other building purchased and the dollar amount of interest payments associated with such purchase. The capitalized value shall represent the unit cost, exclusive of interest. Depreciation shall be computed at an annual rate of four percent;

(ii) Lease-purchase agreements. For each lease-purchase agreement, the district shall report to the Oregon Department of Education, on the forms provided, the dollar amount of the agreement, the interest payments contained in the agreement, and the schedule of such interest payments contained in the agreement. Subsequent to July 1, 1975, the capitalized value shall represent the lease-purchase price less any interest payments contained in the agreement. Depreciation shall be computed at an annual rate of four percent.

(B) Buses and Other Vehicles Used for Approved Pupil Transportation:

(i) Outright purchase (including purchase by conventional contract). For each outright purchase or purchase by conventional contract, each district shall report to the Oregon Department of Education, on the forms provided, the unit cost of the vehicle(s) purchased and the dollar amount of interest payments associated with such purchase. The capitalized value shall represent the unit cost, exclusive of interest. Depreciation shall be computed at an annual rate of ten percent;

(ii) Lease-purchase agreements. For each lease-purchase agreement, the district shall report to the Oregon Department of Education, on the forms provided, the dollar amount of the agreement, any applicable trade-in value, the dollar amounts of interest payments contained in the agreement, and the schedule of such interest payments contained in the agreement. The capitalized value of the vehicles shall represent the lease-purchase price including the trade-in allowance less interest payments contained in the agreement. Depreciation shall be computed at an annual rate of ten percent;

(iii) Lease agreements. If the district is leasing its buses under a lease agreement, the district shall report the annual lease cost. A lease agreement as used in this paragraph means an agreement whereby the lessor retains title to the buses being leased to the lessee school district and the title to the buses is never received by the lessee. Under such a lease agreement, the use of the buses by the lessee is limited by the term of the lease. If there is an auxiliary agreement either written or oral whereby at the end of the lease term, the title of the buses shall pass to the lessee school district, the agreement is not a lease agreement as described in this paragraph but is a lease-purchase agreement as outlined in subparagraph (ii) of this paragraph. The lease payment made by a school district obtaining the use of buses pursuant to a lease as defined in this paragraph shall be used in the computation of the reimbursement in place of the depreciation set forth in subparagraphs (i) and (ii) of this paragraph.

(l) Deductions:

(A) Payments Received from Other Districts and from Patrons. Money received from other school districts, parents, guardians, or students for transportation if paid in support of expenditures listed in subsections (5)(a) through (l) of this rule;

(B) Nonreimbursable Transportation Costs. Actual bus mileage of excludable trips shall include the actual mileage in district owned or contracted buses for transportation for activity trips, athletic trips, school lunch purposes, summer school, adult education, evening school, nursery school, and any other nonreimbursable purposes. Such mileage shall be deducted at the rate indicated in subsection (5)(m)(B) of this rule. The rate of deduction may be reviewed periodically by the State Board of Education and adjusted accordingly;

(C) State and Federal Receipts for Transportation. All state and federal receipts for transportation expenditures, exclusive of funds apportioned under ORS 327.006 and 327.033, that have been included in subsection (5)(a) through (l) of this rule;

(D) Rental or Lease Payments from Private Contractors. Payments received from private contractors for the use of district owned buses and

garages in the operation of the pupil transportation system by the private contractor. This item must be shown as Revenue Code 1930 in the school district audit and the gross payments to the contractor must be included in subsection (5)(c) of this rule.

(7) Each district shall maintain a record, by purpose, of total pupil transportation miles and shall submit a report of such to the Oregon Department of Education on the form provided. The accuracy of such records shall be certified by the district clerk.

(8) If an education service district offers a special service under the provisions of section (4) of ORS 334.175, including home-to-school transportation that would qualify for reimbursement under the provisions of ORS 327.006 if provided by a local school district, the following procedure in crediting the transportation expenditure to the local district may be employed:

(a) The education service district shall compute approved home-to-school transportation costs as provided in section (4) of this rule;

(b) The approved costs so determined shall be billed to and paid by each of the local school districts. The expenditure shall be accounted for by the local district as a transportation expenditure paid to another education agency;

(c) The audited district expenditure shall be recognized by the State Superintendent of Public Instruction in computing the local district's entitlement under ORS 327.006;

(d) If the education service district reimburses the local district the difference between that portion billed and that paid under ORS 327.006, such reimbursement — if derived from property tax sources by education service district resolution — shall not be deducted by the state in determining the local district's approved costs. The local district shall account for the education service district reimbursement as other general receipts are accounted for from the education service district.

(9) For purposes of computing board and room entitlement for a district operating a dormitory under provisions of ORS 327.006, the state assumes responsibility for its proportionate share of costs associated with the provision of food, facilities, staff, operation, and maintenance necessary to provide students with safe and healthy living conditions. The state does not assume responsibility for costs associated with recreation or entertainment of students. The approved cost against which the computation is made for state liability shall not exceed the limit stated in ORS 332.405. In addition, the state will assume its proportionate share of the cost of field trips as defined in subsection (3)(c) of this rule.

(10) The computation of approved expenditures for board and room entitlement shall be made as follows:

(a) Salaries;

(b) Operation:

(A) Utilities;

(B) Supplies;

(C) Other Operational Costs.

(c) Maintenance:

(A) Upkeep;

(B) Replacement.

(d) Fixed Charges:

(A) Employee Benefits;

(B) Other Fixed Charges.

(e) Food;

(f) Operation of Buses and Other Vehicles--Supplies, Repairs and Maintenance;

(g) Depreciation:

(A) Dormitory;

(B) Buses and Other Vehicles.

(h) Total Expenditures (Sum of subsections (10)(a) through (g) of this rule);

(i) Deductions (subtract if cost is included in cost above):

(A) Payments Received from Other Districts and from Patrons;

(B) Nonreimbursable Transportation Costs as indicated in subsection (5)(m)(B) of this rule;

(C) State and Federal Receipts for Transportation, except those apportioned under ORS 327.006, 327.033, or third party medicaid payments, if used to support expenditures in subsections (10)(a) through (g) of this rule;

(D) Federal School Lunch, Breakfast, and Milk Reimbursements;

(E) Sales of Food.

(j) Total Deductions (sum (10)(i)(A) + (i)(B) + (i)(C) + (i)(D) + (i)(E));

(k) Approved Cost ((10)(h) minus (10)(j) of this rule).

(11) The items included in the board and room entitlement computation are defined as follows:

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(a) Salaries. Salaries and wages paid dormitory personnel, including the dormitory manager, cooks, custodians, and other personnel directly concerned with operation of the dormitory, and that portion of salaries paid secretarial and clerical assistants and other personnel attributable to the dormitory program;

(b) Operation:

(A) Utilities. Heat for buildings, water and sewage, electricity, telephone, and other utilities necessary for the operation of the dormitory;

(B) Supplies. Custodial supplies, supplies for care of grounds, linens, and other supplies necessary for the operation of the dormitory including food services. Purchase of food is included in subsection (11)(e) of this rule;

(C) Other Operational Costs. Contracted custodial services, window washing, laundry or linen services, etc., necessary for the operation of the dormitory.

(c) Maintenance:

(A) Upkeep. Expenditures associated with maintaining the existing dormitory facilities in a safe, healthy, and efficient condition, including supplies and materials for upkeep of dormitory grounds and the dormitory building. Costs associated with maintenance of recreational or entertainment facilities are excluded;

(B) Replacement of Equipment. Expenditures associated with replacing equipment necessary to the safe, healthy, and efficient operation of the dormitory. Replacement of equipment used for recreational or entertainment purposes are excluded.

(d) Fixed Charges:

(A) Employee Benefits. Expenditures for dormitory employees' benefits including social security and retirement, employee health insurance, workers' compensation, and unemployment insurance;

(B) Other Fixed Charges. Expenditures for property insurance, liability insurance, rental of land and buildings for purposes associated with operation of the dormitory, and other fixed charges directly attributable to operation of the dormitory.

(e) Food. Expenditures for food necessary for the operation of the dormitory;

(f) Operation of Buses and Other Vehicles — Supplies, Repairs, and Maintenance. Expenditures for gasoline, oil, lubricants, tires, tire repair, batteries, vehicle repair parts and supplies, repair of vehicles by other than the school district, garage maintenance and operation, and garage equipment repair and maintenance necessary for the operation of buses utilized for purposes stated in section (3) of this rule and of other vehicles necessary for the operation of the dormitory;

(g) Depreciation:

(A) Dormitory. For purposes of computing dormitory depreciation, capitalized cost is defined as the unit cost of the asset (including the cost of original equipment), exclusive of interest, plus the cost of substantial improvements or remodeling. Costs associated with providing recreational or entertainment facilities are not included. Depreciation shall be computed at an annual rate of four percent;

(B) Buses and Other Vehicles. Depreciation for buses used for approved pupil transportation and that portion of other vehicles necessary for operation of the dormitory shall be computed in accordance with the formula and definition stated in paragraph (6)(k)(B) of this rule.

(h) Total. Sum of subsections (10)(a) through (g) of this rule;

(i) Deductions:

(A) Payments Received from Other Districts and from Patrons. Money received from other school districts, parents, guardians, or students for transportation or room and board if paid in support of expenditures listed in subsections (10)(a) through (f) of this rule;

(B) Nonreimbursable Transportation Costs. Costs for nonreimbursable transportation according to the formula and definition stated in paragraph (6)(l)(B) of this rule;

(C) State and Federal Receipts for Transportation. All state and federal receipts for transportation or room and board expenditures exclusive of funds apportioned under ORS 327.006 that have been included in subsections (10)(a) through (f) of this rule;

(D) Federal School Lunch, Breakfast, and Milk Reimbursements. All federal receipts for school lunch, breakfast, and milk expenditures that have been included in subsections (10)(a) through (f) of this rule;

(E) Sales of Food. Money received from teachers, students, or other individuals from food sales for which the expenditures are included in subsections (10)(a) through (f) of this rule.

(12) Such items of expenditure as may be questionable in applying the policy stated in this administrative rule shall be resolved by the State Superintendent of Public Instruction and such determination shall be final.

(13) Apportionment of the State School Fund for 2001–02 and subsequent years.

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

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

Stats. Implemented: ORS 327.013 & 820.100 - 820.120

Hist.: 1EB 177, f. 10-2-74; 1EB 181, f. 1-17-75, ef. 7-1-75; 1EB 209, f. 12-5-75, ef. 1-16-76; 1EB 220, f. 2-17-76, ef. 3-15-76; 1EB 233, f. 6-11-76, ef. 6-18-76; 1EB 4-1978, f. 1-27-78, ef. 1-27-78; 1EB 10-1980, f. & ef. 5-5-80; 1EB 6-1981, f. 3-2-81, ef. 3-3-81; 1EB 4-1982, f. & ef. 2-10-82; 1EB 15-1982, f. 8-4-82, ef. 8-5-82; 1EB 17-1983, f. 11-23-83, ef. 11-25-83; 1EB 1-1985, f. 1-4-85, ef. 1-7-85; 1EB 5-1986, f. 1-30-86, ef. 2-1-86; EB 4-1987, f. & ef. 2-20-87; EB 32-1987, f. & ef. 12-10-87; EB 42-1988, f. & cert. ef. 11-15-88; EB 3-1992, f. & cert. ef. 2-21-92; EB 21-1993, f. & cert. ef. 6-2-93; EB 4-1997, f. & cert. ef. 4-25-97; ODE 9-2000, f. & cert. ef. 4-5-00; ODE 25-2001, f. & cert. ef. 11-7-01; ODE 9-2003, f. & cert. ef. 6-13-03; ODE 10-2006, f. & cert. ef. 2-21-06; ODE 8-2008, f. & cert. ef. 3-21-08

Rule Caption: Specifies process for renewal of charters.

Adm. Order No.: ODE 9-2008

Filed with Sec. of State: 3-21-2008

Certified to be Effective: 3-21-08

Notice Publication Date: 11-1-2007

Rules Adopted: 581-020-0359, 581-020-0361

Subject: Provides process for renewal of charters by charter school boards and sponsors. Also provides process for appeal to State Board of Education of decision of sponsor to not renew a charter.

Rules Coordinator: Paula Merritt—(503) 947-5746

581-020-0359

Process to Renew Charter

(1) A public charter school governing body must request renewal of the charter (contract) by the sponsor in writing at least 180 days before expiration of the charter.

(2) When a sponsor has received a written request from a public charter school governing body, the sponsor must schedule and hold a public hearing on the renewal request within 45 days from the receipt of the request for renewal.

(3) Within 10 days after the public hearing, the sponsor must notify the public charter school governing body of the sponsor's intent to renew or not renew the charter.

(4) Within 20 days after the public hearing, the sponsor must either:

(a) Renew the charter; or

(b) State in writing the reasons for denying the renewal of the charter.

(5)(a) A sponsor must base its decision to renew or not renew a charter on a good faith evaluation of whether the charter school:

(A) Is in compliance with state and federal laws;

(B) Is in compliance with the terms of the prior charter;

(C) Is meeting or working toward meeting the student performance goals and agreements specified in the charter or any other written agreements between the sponsor and the public charter school governing body;

(D) Is fiscally stable; and

(E) Is in compliance with any renewal criteria specified in the previous charter, if any.

(b) As used in this section, "good faith evaluation" means an evaluation of all criteria required by this section resulting in a conclusion that a reasonable person would come to who is informed of the law and the facts before that person.

(6) The sponsor must base the evaluation described in section (5) of this rule primarily on a review of the public charter school's annual performance reports, annual audit of accounts and annual site visit and review as required by ORS 338.095 and any other information mutually agreed upon by the public charter school governing body and the sponsor.

(7)(a) If the sponsor renews the charter, the sponsor and public charter school governing body shall negotiate in good faith a new charter within 90 days after the date on which the sponsor approved the renewal of the charter, unless both parties agree to an extension of time.

(b) If the sponsor and the charter school governing body have not executed a new charter agreement within 90 days after the date on which the sponsor approved the renewal of the charter or an alternative date agreed to by both parties, the charter shall be considered not renewed and the sponsor must state in writing the reasons for denying the renewal of the charter within 100 days after the date on which the sponsor originally approved the renewal of the charter or by a specified alternative date agreed to by both parties.

(c) As used in this section, "negotiate in good faith" means to negotiate with an honest exchange of the facts of the matters under consideration with a view to obtaining agreement of each of the parties involved.

(8) If the sponsor does not renew the charter, the public charter school governing body may address the reasons for nonrenewal and resubmit its

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request to the sponsor within 30 days after the date on which the sponsor notified the public charter school governing body of the decision not to renew the charter. If a sponsor receives a revised request under this section, the sponsor shall review the request using the process required by sections (2) to (7) of this rule. A public charter school governing board may only submit a revised request once under this section unless otherwise specified by the sponsor.

(9) Notwithstanding sections (1) to (8) of this rule, a sponsor and a public charter school governing body may agree in the charter of the school to a timeline for renewing the charter that is different from the timeline required by sections (1) to (8) of this rule.

(10) The State Board of Education delegates to the Superintendent of Public Instruction or designee all administrative functions necessary or reasonable in order to determine if the charter of a school sponsored by the state board should be renewed. The Superintendent or designee shall follow the procedures and timelines required by this rule. This delegation to the Superintendent or designee includes, but is not limited to:

(a) Determining the form, contents, and timelines of the renewal;

(b) Determining the records required for determining the renewal and ordering the production of those records from the public charter school governing body and establishing timelines for the production of those records;

(c) Requiring the charter school governing body to respond to written or oral inquiries related to the sponsorship;

(d) Delegating the sponsorship function to Department of Education staff or a hearings officer to conduct a hearing and to issue a proposed order; and

(e) Issuing a final order.

(11) If the sponsor does not renew the charter based on the revised request for renewal submitted under section (8) of this rule, the public charter school governing body may:

(a) If the sponsor is a school district, appeal the decision of the sponsor to the State Board of Education under OAR 581-020-0361.

(b) If the sponsor is the State Board of Education, seek judicial review of the final order under ORS 183.484.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 338.065

Hist.: ODE 9-2008, f. & cert. ef. 3-21-08

581-020-0361

Appeal of Sponsor's Decision Not to Renew a Charter

(1) Within 30 days of receiving notice from a sponsor that the sponsor has decided not to renew the charter (contract) based on a revised request for renewal, a public charter school governing body may request the State Board of Education review the decision by the sponsor not to renew a charter. Any notice of a request for State Board review must be made in writing and be delivered to the State Board of Education and the business address of the sponsor.

(2) The decision of a sponsor not to renew a charter must be based on a good faith evaluation of the factors set out in ORS 338.065 (6) and must utilize the process set out in ORS 338.065 (4) and OAR 581-020-0360.

(3) The State Board, State Superintendent or designee will review the decision of a sponsor not to renew a charter for compliance with the requirements of subsection (2) of this rule.

(4) The State Board of Education delegates to the Superintendent of Public Instruction or designee all administrative functions necessary or reasonable in order to conduct a timely review of the decision of the sponsor to not renew a charter. This delegation to the Superintendent includes, but is not limited to:

(a) Determining the form, contents, and timelines of the petition for review;

(b) Determining the records required for review and ordering the production of those records from either the public charter school governing body or school district board and establishing timelines for the production of those records;

(c) Requiring the public charter school governing body or school district board to respond to written or oral inquiries related to board review;

(d) Delegating the review function to department staff or a hearings officer conduct the review and issue a proposed order; and

(e) Issuing a final order.

(5) If the State Superintendent or designee finds that the sponsor made the decision to not renew a charter based on a good faith evaluation of the factors set out in ORS 338.065 (6) and utilized the process set out in ORS 338.065 (4), a final order will be issued to uphold the decision of the sponsor.

(6) If the State Superintendent or designee finds that the sponsor did not make the decision to not renew a charter based on a good faith evaluation of the factors set out in ORS 338.065 (6), did not utilize the process set out in ORS 338.065 (4) or both, a final order will be issued to order the sponsor to reconsider the request for renewal utilizing the process and requirements set out in OAR 581-020-0360.

(7) The State Superintendent or designee shall issue the final order within 60 days from the receipt of the request for review, unless both parties agree to a different timeline.

(8) If a school district on reconsideration ordered under section (6) of this rule does not renew the charter, the sponsor's decision may be appealed under the provisions of ORS 183.484.

(9) A charter school that requested renewal of its charter by the sponsor in writing at least 180 days before expiration of the charter shall remain open under the terms of its charter, unless otherwise agreed to by the charter school and the sponsor, until one or more of the following occurs:

(a) The sponsor and the charter school execute a new charter.

(b) The sponsor denies the renewal of the charter and the time period for the charter school to resubmit a renewal request or appeal the decision to the State Board of Education has lapsed.

(c) The State Superintendent or designee issues a final order to uphold the decision of the sponsor to not renew.

(d) The State Superintendent or designee issues a final order that orders the school district to reconsider the decision to non-renew and the school district again notifies the charter school of a nonrenewal.

(e) A court orders the closure of the school.

(f) The charter of the school is terminated under ORS 338.105 and OARs 581-020-0380 and 581-020-0385.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 338.065

Hist.: ODE 9-2008, f. & cert. ef. 3-21-08

Oregon Housing and Community Services Chapter 813

Rule Caption: Broadens the Individual Development Account rules to include youth. Clarifies the purpose of the account.

Adm. Order No.: OHCS 2-2008

Filed with Sec. of State: 3-18-2008

Certified to be Effective: 3-18-08

Notice Publication Date: 1-1-2008

Rules Amended: 813-300-0010, 813-300-0020, 813-300-0030, 813-300-0060, 813-300-0080, 813-300-0100, 813-300-0120

Rules Repealed: 813-300-0010(T), 813-300-0020(T), 813-300-0030(T), 813-300-0060(T), 813-300-0080(T), 813-300-0100(T), 813-300-0120(T)

Subject: 813-300-0010(1) Adds youth age 12 and older as eligible account holders.

813-300-0010 Clarifies the common definitions and terms located within the rules. Added a definition for "Median Household Income."

813-300-0020(5) Removes the language that application information may be obtained by contacting Oregon Housing and Community Services.

813-300-0030(c) Clarifies that the capacity of the prospective fiduciary organization to provide appropriate support services and general assistance to advance account holder self-reliance will be considered.

813-300-0060 Administrative changes (Housekeeping).

813-300-0080(2)(d) Allows a fiduciary organization to expend a maximum of 5 percent of tax credit contributions for administering and evaluating their program plan unless an exception is granted by the Department. Removes the ability for a fiduciary organization to expend 5 percent of the supplemental funds without an exception.

813-300-0080(2)(f)(C) Increases the aggregate amount of matching IDA funds that fiduciary organization may deposit with respect to a specific account holder from \$2,000 to \$3,000.

813-300-0100(12) Removes the requirement that the annual report will provide collective data for each such yearly class until the last IDA account holder or designated beneficiary of a particular class

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completes his/her personal development plan and the related IDA expires.

813-300-0120 Adds additional purposes where account holders may withdraw and use IDA deposits.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-300-0010

Definitions

As used in these rules, unless the context indicates otherwise:

(1) "Account holder" means a member, age 12 or older, of a lower income household that has a net worth of less than \$20,000 who is the named depositor of an individual development account.

(2) "Contributor" means a person or entity contributing funds to the Department or to a fiduciary organization for the purpose of matching IDA deposits by an account holder or for funding program plan operations.

(3) "Department" means the Housing and Community Services Department established in ORS 456.555 and, where applicable, its designee.

(4) "Designated beneficiary" means a minor-age member of the account holder's household who is the beneficiary of an IDA used to pay the member's extracurricular non-tuition expenses designed to prepare the member for post-secondary education or job training.

(5) "Fiduciary organization" means a non-profit, fund raising organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on January 1, 1999, or a federally recognized Oregon Indian tribe that is located, to a significant degree, within the boundaries of this state, as selected by the department under these rules.

(6) "Fiduciary organization program plan" or "program plan" means a mission statement by a fiduciary organization and the corresponding detailed plan by it for the solicitation of contributions (tax credit or otherwise) and prospective account holders, the management of IDA's and their associated personal development plans, and the operation of the fiduciary organization itself — all as approved by the Department and with such modifications as the Department may require. A prospective program plan must accompany any application to the Department for its approval of a fiduciary organization.

(7) "Financial institution" means an organization regulated under ORS Chapters 706 to 716, 722 or 723, or in the case of an account established for the purpose described in ORS 458.685(1)(c) related to college savings plans, a financial institution as defined in ORS 348.841.

(8) "Individual development account (IDA)" or "account" means a contract between an account holder and a fiduciary organization for the deposit of funds into a financial institution by the account holder, and the deposit of matching funds into a financial institution by the fiduciary organization, to allow the account holder to accumulate assets for use toward achieving a specific purpose approved by the fiduciary organization.

(9) "Lower income household" means a household having an income equal to or less than 80 percent of the median household income for the area as determined by the Department, giving consideration to area household data published by the United States Department of Housing and Urban Development.

(10) "Median Household Income" means, for the appropriate household size, the higher of:

(a) The median family income for the Metropolitan Statistical Area or county as published annually by the United States Department of Housing and Urban Development, or

(b) The statewide median family income for Oregon as published annually by the United States Department of Housing and Urban Development.

(11) "Net worth" means the value of all assets owned in whole or part by household members other than equity in a residence and one vehicle minus the total debts and obligations of household members, all as measured at the time the prospective account holder applies to establish the IDA.

(12) "Oregon individual development account tax credit" or "tax credit" means a credit against taxes otherwise due under ORS Chapter 316, 317, or 318, as allowed in return for contributions to a fiduciary organization for eventual distribution to individual development accounts established under ORS 458.685.

(13) "Personal development plan" means a written plan developed jointly by the fiduciary organization and the prospective account holder for an IDA that is designed to provide the account holder with appropriate financial and asset training, counseling, career or business planning and other services that will increase the self-reliance of the account holder and his/her household through achievement of the IDA's approved purposes.

The personal development plan must be in conformance with ORS 458.680, these rules and other requirements of the Department.

(14) "Related funds" means contributions to fiduciary organizations for IDA program purposes that do not qualify for tax credits and supplemental funding from the Department for IDA program purposes.

(15) "Resident of this state" has the meaning given in ORS 316.027

(16) "Reverted funds" means matching IDA deposits that devolve to a fiduciary organization because of the termination or revocation of a person as an account holder or unused tax credit contributions or supplemental funds upon termination or revocation of a fiduciary organization or at the expiration of its program plan.

(17) "Supplemental funding" means funds provided by the Department to fiduciary organizations for program plan purposes.

(18) "Tax credit contributor" means a contributor who receives a corresponding tax credit as allowed in ORS 315.271.

(19) "Tax credit contributions" means funds obtained from tax credit contributors who, in return, earn a tax credit.

(20) "Trust Land" means all lands held in trust by the United States on behalf of an Indian Tribe or individual Indian.

Stat. Auth.: ORS 456.555, 456.625 & 458.700

Stats. Implemented: ORS 315.271 & 458.670 - 458.700

Hist.: OHCS 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-5-03; OHCS 1-2003, f. & cert. ef. 4-4-03; OHCS 9-2003, f. & cert. ef. 12-19-03; OHCS 13-2007(Temp), f. & cert. ef. 10-2-07 thru 3-30-08; OHCS 2-2008, f. & cert. ef. 3-18-08

813-300-0020

Fiduciary Organization Application Process

(1) The Department from time to time may solicit applications from entities desiring to be authorized as fiduciary organizations. The Department, in its sole discretion, may choose to consider for approval only proposed fiduciary organizations identified in applications received in response to such solicitations. The Department, in its sole discretion, also may approve fiduciary organizations on its own initiative or consider for approval proposed fiduciary organizations identified in applications received outside of a Department solicitation.

(2) All applications for approval of a proposed fiduciary organization shall be in writing to the Department in such form and with such content as the Department may require. In addition to any other information required by the Department, an application must include the following:

(a) The name, address, telephone number, Fax number, tax identification number of the proposed fiduciary organization, and key program contact person;

(b) A description of the proposed fiduciary organization entity, its officers, and ownership structure;

(c) Copies of the organic documents of the proposed fiduciary organization and proof, satisfactory to the Department, that such entity is in good standing and is authorized to transact business in the State of Oregon;

(d) A statement of the proposed fiduciary organization's capacity to act as a fiduciary organization, including relevant experience;

(e) A description of the geographic area to be served;

(f) A description of the key personnel who will specifically administer the individual development account program in the proposed fiduciary organization;

(g) The proposed program plan of the proposed fiduciary organization;

(h) A description of proposed third-party contractors and others, if any, by which the proposed fiduciary organization intends to accomplish program plan responsibilities;

(i) Signed agreements with one or more financial institutions to hold and operate individual development accounts;

(j) The entity's proposed program plan budget through the entity's first full fiscal year of its program plan identifying, at a minimum, projected revenues and expenses.

(k) If applicable, an application for supplemental funding from the Department for the period of the proposed program plan budget.

(3) The Department, in its sole discretion, may determine the number of fiduciary organizations to be authorized at any particular time. Consistent with such discretion, and its discretion to solicit, to consider and to initiate applications, the Department will approve as fiduciary organizations those entities that, in its judgment, best suit the purposes of ORS 458.670 through 458.700 and these rules.

(4) The Department, in its sole discretion, may establish time limits upon the duration of any approval of a fiduciary organization.

Stat. Auth.: ORS 456.555, 456.625 & 458.700

Stats. Implemented: ORS 315.271 & 458.670 - 458.700

Hist.: OHCS 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-5-03; OHCS 1-2003, f. & cert. ef. 4-4-03; OHCS 13-2007(Temp), f. & cert. ef. 10-2-07 thru 3-30-08; OHCS 2-2008, f. & cert. ef. 3-18-08

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813-300-0030

Fiduciary Organization Application Review

(1) In reviewing applications for authorization as a fiduciary organization, the Department shall consider the following factors:

(a) The ability of the prospective fiduciary organization to implement and administer the individual development account program, including the ability to verify account holder eligibility, certify that matching deposits are used only for approved purposes and exercise general fiscal accountability;

(b) The capacity of the prospective fiduciary organization to provide or raise matching funds for the deposits of account holders;

(c) The capacity of the prospective fiduciary organization to provide appropriate support services and general assistance to advance account holder self-reliance; and

(d) The links that the prospective fiduciary organization has to other activities and programs designed to increase the independence of this state's lower income households through education and training, home ownership and small business development.

(2) In reviewing applications for authorization as a fiduciary organization, the Department may consider additional factors including, but not limited to, the following:

(a) The eligibility of the entity;

(b) The sufficiency and accuracy of the application;

(c) The geographic area of proposed program plan operation and the need to be addressed;

(d) The performance of the entity in providing additional information, as requested;

(e) The quality of the proposed program plan, including the range and quality of potential personal development plans;

(f) The willingness and ability of the prospective fiduciary organization to effect modifications to its proposed program plan;

(g) The capacity of the prospective fiduciary organization to work together with third-party contractors and other program plan partners to accomplish its proposed program plan as modified, if at all, by the Department;

(h) The Department's past experience with the entity, its proposed third-party contractors, other proposed program plan partners, and identified personnel;

(i) Public opinion or other input; and

(j) Department administrative interests.

(3) The Department may condition authorization of an entity as a fiduciary organization upon Department-required changes in the terms of the entity's application including, but not limited to its proposed program plan. The Department also may condition its authorization upon such other requirements as the Department determines to be appropriate.

Stat. Auth.: ORS 456.555, 456.625 & 458.700

Stats. Implemented: ORS 315.271 & 458.670 - 458.700

Hist.: OHCS 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-5-03; OHCS 1-2003, f. & cert. ef. 4-4-03; OHCS 13-2007(Temp), f. & cert. ef. 10-2-07 thru 3-30-08; OHCS 2-2008, f. & cert. ef. 3-18-08

813-300-0060

Fiduciary Organization Suspension or Termination of Account Holders

(1) Subject to these rules, fiduciary organizations, for cause, may suspend or terminate a person's status as an account holder or designated beneficiary and may suspend or terminate any related IDA and personal development plan.

(2) Factors that fiduciary organizations may consider as sufficient cause for any such suspension or termination include the following:

(a) If an account holder or designated beneficiary moves from the area where the personal development program is conducted or is otherwise unable to continue in the personal development program.

(b) The withdrawal of funds by an account holder from an account for other than a purpose approved by the fiduciary organization;

(c) The failure by an account holder to make a timely reimbursement to an account after an emergency withdrawal pursuant to ORS 458.685(2);

(d) A material misrepresentation or omission by the account holder or designated beneficiary to the fiduciary organization in the application or otherwise;

(e) A material failure by the account holder or designated beneficiary to comply with applicable law, these rules, orders or directives of the Department, the terms of the IDA or the terms of the personal development plan;

(f) Ineligibility of the account holder or designated beneficiary; and

(g) Failure by the account holder or designated beneficiary to cooperate reasonably with the fiduciary organization or its third-party contractors or other partners in the performance or evaluation of the personal develop-

ment plan or in the performance, evaluation, or audit of the IDA and the funds related thereto.

(3) In conjunction with the termination of any person's status as an account holder based on factors identified above in Section 813-300-0060(2)(a), (b), or (c), all matching IDA deposits and all interest earned on such matching IDA deposits shall revert to the fiduciary organization.

(4) In conjunction with the termination of any person's status as an account holder or designated beneficiary based on other factors identified or allowed in Section 813-300-0060(2), fiduciary organizations may rescind any right or interest of account holders in, and assume sole ownership of, any or all matching IDA deposits and the interest earned on such matching IDA deposits.

(5) Fiduciary organizations must provide thirty (30) days written notice delivered by mail to an account holder at his or her last known address, any designated beneficiary, at his or her last known address, receiving assistance through the account holder's personal development plan, and to the Department before suspending or terminating the person's status as an account holder. The notice must include a provision satisfactory to the Department advising the account holder of his or her right to obtain administrative review by the Department of any determination by the fiduciary organization to suspend or terminate his/her status as an account holder. The administrative review provision also must advise the account holder and any designated beneficiary receiving assistance through the account holder's personal development plan of their right to obtain administrative review by the Department of any determination by the fiduciary organization to suspend or terminate the related personal development plan or to rescind any right or interest of the account holder in, and to assume sole ownership of, any or all matching IDA deposits and the interest earned on such matching IDA deposits.

(6) A fiduciary organization may provide a shorter written notice of suspension or termination if the fiduciary organization identifies in the notice the exigent circumstances reasonably requiring such shorter notice period.

Stat. Auth.: ORS 456.555, 456.625 & 458.700

Stats. Implemented: ORS 315.271 & 458.670 - 458.700

Hist.: OHCS 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-5-03; OHCS 1-2003, f. & cert. ef. 4-4-03; OHCS 13-2007(Temp), f. & cert. ef. 10-2-07 thru 3-30-08; OHCS 2-2008, f. & cert. ef. 3-18-08

813-300-0080

Fiduciary Organization Use of Tax Credit Contributions and Related Funds

(1) Oregon individual development account tax credit contributions to fiduciary organizations, other contributions to fiduciary organizations specifically for their program plan, and any supplemental funds from the Department to fiduciary organizations shall be used by fiduciary organizations solely for reasonable and documented program plan purposes consistent with these rules.

(2) In addition to any other limitations on supplemental funds imposed by the Department when providing such supplemental funds to fiduciary organizations, the following limitations apply to the use of tax credit contributions and related funds:

(a) Fiduciary organizations only may expend tax credit contributions and related funds in a manner consistent with their budget as approved by the Department;

(b) Fiduciary organizations may expend a maximum of 2% of their received tax credit contributions for administering the solicitation of tax credit contributions;

(c) Fiduciary organizations may not expend supplemental funds for administering the solicitation of tax credit contributions;

(d) Fiduciary organizations may expend a maximum of 5% of tax credit contributions for administering and evaluating their program plan, unless an exception is granted by the Department.

(e) Fiduciary organizations may expend a maximum of 20% of tax credit contributions for program operating and delivery costs, including the costs of providing assistance to account holders and their beneficiaries to develop and fulfill personal development plans;

(f) Fiduciary organizations may expend tax credit contributions and related funds for appropriate matching of account holder IDA deposits as follows:

(A) Allowable matching IDA deposits by fiduciary organizations must equal at least \$1, but not exceed \$5, for each \$1 of IDA deposits by the account holder;

(B) Matching IDA deposits must be placed in:

(i) A savings account with an approved financial institution jointly held by the account holder and the fiduciary organization and requiring the signatures of both for withdrawals;

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(ii) A savings account with an approved financial institution that is controlled by the fiduciary organization and is separate from the savings account of the account holder; or

(iii) In the case of an account established for the purpose described in ORS 458.685(1)(c), a qualified tuition savings program account under ORS 348.841 to 348.873, in which the fiduciary organization is the account owner as defined in ORS 348.841.

(C) The aggregate maximum amount of matching IDA funds that a fiduciary organization may deposit with respect to a specific account holder shall not exceed more than \$3,000 in a 12-month period; and

(D) The aggregate maximum amount of matching IDA funds that a fiduciary organization may deposit with respect to a specific account holder during the existence of that account holder's IDA shall not exceed \$20,000.

(g) Supplemental funds not expended, obligated or deposited consistent with these rules within one year from the date that such supplemental funds are received from the Department shall be returned immediately to the Department; and,

(3) Reverted matching IDA deposits must be used by fiduciary organizations to make matching IDA deposits for eligible account holders consistent with these rules as soon as is reasonably practicable.

(4) A fiduciary organization that is the account owner of a qualified tuition savings program account:

(a) May make a qualified withdrawal only at the direction of the designated beneficiary and only after the qualified tuition savings program account of the account holder that was established for the designated beneficiary has been reduced to a balance of zero exclusively through qualified withdrawals by the designated beneficiary; and

(b) May make nonqualified withdrawals only if the qualified tuition savings program account of the account holder that was established for the designated beneficiary has a balance of less than \$100 or if the account holder or designated beneficiary has granted permission to make the withdrawal. Moneys received by a fiduciary organization from such a nonqualified withdrawal must be used for program plan purposes.

Stat. Auth.: ORS 456.555, 456.625 & 458.700

Stats. Implemented: ORS 315.271 & 458.670 - 458.700

Hist.: OHCS 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-5-03; OHCS 1-2003, f. & cert. ef. 4-4-03; OHCS 13-2007(Temp), f. & cert. ef. 10-2-07 thru 3-30-08; OHCS 2-2008, f. & cert. ef. 3-18-08

813-300-0100

Fiduciary Organization Records and Reporting Requirements

(1) Fiduciary organizations shall prepare and maintain appropriate, accurate and complete program plan record-keeping systems and records satisfactory to the Department. Such record-keeping systems also must cover and include records generated by third-party contractors and other program plan partners.

(2) A fiduciary organization must maintain separate files for each account holder that, at a minimum, includes the following records:

(a) Documentation of income eligibility;

(b) The personal development plan;

(c) The IDA;

(d) Records of all IDA deposits, withdrawals, and other financial information;

(e) Evidence of training received;

(f) Documentation of any determination with respect to the status of the account holder or any beneficiaries;

(g) Documentation of any exit interviews; and

(h) Any other information required by the Department.

(3) Fiduciary organizations shall maintain such program plan record-keeping systems and records at their principal place of business in Oregon.

(4) Fiduciary organizations shall maintain program plan records for a period of six (6) years from the date of completion or termination of each account holder's or designated beneficiary's personal development plan and the expiration of the IDA. The Department may require fiduciary organizations to maintain records for longer periods including, without limit, for unresolved audit matters.

(5) The Department, the Office of the Secretary of State, and the Department of Justice shall be permitted to inspect, copy, and audit any and all program plan records and take other action that to them seems appropriate in the conduct of such inspections or audits.

(6) Fiduciary organizations shall file quarterly reports with the Department in form, substance and timing acceptable to the Department.

(7) Quarterly reporting periods end on March 31, June 30, September 30, and December 31 of each calendar year. Unless indicated otherwise by the Department, fiduciary organizations shall deliver quarterly reports to

the Department no later than 5:00 p.m. on the last working day within 30 days following the last day of that quarterly reporting period.

(8) In addition to any other information required by the Department, quarterly reports shall include the following:

(a) Summary demographic data and cumulative totals regarding current account holders;

(b) IDA deposit and withdrawal data (approved and non-approved) by month, including separately identified matching IDA deposits and withdrawals;

(c) Documentation of administrative, third-party contractor and other program plan partner costs and disbursements; and

(d) Documentation of tax credit contributions and related funds receipts.

(9) Fiduciary organizations also shall file annual reports with the Department in form, substance and timing acceptable to the Department.

(10) The annual report shall cover the fiscal year of the fiduciary organization and shall be filed by the fiduciary organization with the Department not later than ninety (90) days following the end of each fiscal year of the fiduciary organization. Unless otherwise expressly approved in writing by the Department, each fiduciary organization's fiscal year shall run concurrently with the calendar year, i.e., January 1 through December 31.

(11) At a minimum, fiduciary organization annual reports shall include:

(a) The number of IDAs administered by the fiduciary organization;

(b) The amount of deposits and matching deposits for each account;

(c) The purpose of each account;

(d) The number of withdrawals made from each account; and

(e) Any other information the Department may require for the purpose of making a return on investment analysis or for any other purpose of the Department.

(12) Fiduciary annual reports must be in a format approved by the Department, that, in addition to providing aggregate and individual IDA data, also collectively identifies and tracks IDAs by the year of their creation.

Stat. Auth.: ORS 456.555, 456.625 & 458.700

Stats. Implemented: ORS 315.271 & 458.670 - 458.700

Hist.: OHCS 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-5-03; OHCS 1-2003, f. & cert. ef. 4-4-03; OHCS 13-2007(Temp), f. & cert. ef. 10-2-07 thru 3-30-08; OHCS 2-2008, f. & cert. ef. 3-18-08

813-300-0120

Account Holder Use of Funds

(1) Account holders only may withdraw and use IDA deposits in a manner consistent with their IDA, the relevant personal development plan, these rules and any relevant directives of the Department.

(2) Account holders only may withdraw and use IDA deposits for the following purposes as approved by their fiduciary organization:

(a) For the acquisition of post-secondary education or job training;

(b) If the account holder has established the account for the benefit of a designated beneficiary, for the payment of extracurricular non-tuition expenses designed to prepare the designated beneficiary for post-secondary education or job training;

(c) To capitalize a small business;

(d) For the purchase of a primary residence;

(e) With respect to account holder deposits only, for an emergency as set forth in ORS 458.685(2)(a);

(f) If the account holder has established a qualified tuition savings program account under ORS 348.841 to 348.873 on behalf of a designated beneficiary, the establishment of an additional qualified tuition savings program account on behalf of the same designated beneficiary;

(g) Improvements, repairs or modifications necessary to make or keep the account holder's primary dwelling habitable, accessible, or visitable for the account holder or a household member. This does not include improvements, repairs, or modifications made to a rented primary dwelling to achieve or maintain a habitable condition for which ORS 90.320(1) places responsibility on the landlord;

(h) The purchase of equipment, technology, or specialized training required to become competitive in obtaining or maintaining employment or to start or maintain a business, as specified in the account holder's personal development plan.

(3) IDA deposits, including the interest earned thereon, withdrawn by the account holder for an emergency as set forth in ORS 458.685 and OAR 813-300-0120(2)(e) above, must be repaid by the account holder within 12 months.

(4) In addition to payment on the purchase price of a residence pursuant to OAR 813-300-0120(2)(d) above, appropriate account moneys may

ADMINISTRATIVE RULES

be used to pay any usual or reasonable settlement, financing or other closing costs with respect to such residence.

(5) Account holders may not use IDA deposits to purchase a primary residence if they have owned or held any interest in a residence during the three years prior to making the purchase for which they intend to use IDA deposits. This three year restriction shall not apply in the following:

(a) For displaced homemakers or other individuals who have lost homeownership as a result of divorce.

(b) For a tribal member who has an interest in trust land and still has rights to an allotment under the Dawes Act Public Law 280 and amended in 1891, the 1906 Burke Act and the 1910 Omnibus Act Statutes at Large 24, 388-91, NADP Document A1887, but the tribal member faces multiple ownership of his or her land status and cannot successfully achieve sole ownership in order to receive any equity or collateral from that allotment. If the tribal member solely owns a residence on land known as an allotment and has successfully received sole ownership including the receipt of title status report (TSR) through the Bureau of Indian Affairs, they may not use IDA deposits to purchase a primary residence. If the person can receive more than \$2500 in equity or collateral of their allotment, the value over \$2500 shall be included in their asset limit.

(6) In capitalizing a small business pursuant to OAR 813-300-0120(2)(c) above, IDA deposits may be used for capital, plant, equipment and inventory expenses or for working capital pursuant to a business plan approved by the fiduciary organization. To qualify for fiduciary organization approval, the business plan must have been developed by a financial institution, a nonprofit micro enterprise program or other qualified agent demonstrating business expertise. The business plan also must include a description of the services or goods to be sold, a marketing plan and projected financial statements.

(7) Account holders must repay moneys improperly taken from IDA deposits including the interest earned thereon, when required by their fiduciary organization or by the Department.

Stat. Auth.: ORS 456.555, 456.625 & 458.700

Stats. Implemented: ORS 458.670 - 458.700

Hist.: OHCS 12-2002(Temp), f. & cert. ef. 10-8-02 thru 4-5-03; OHCS 1-2003, f. & cert. ef. 4-4-03; OHCS 9-2003, f. & cert. ef. 12-19-03; OHCS 13-2007(Temp), f. & cert. ef. 10-2-07 thru 3-30-08; OHCS 2-2008, f. & cert. ef. 3-18-08

Rule Caption: Updates the program name, clarifies eligible activities, requires annual report of program activities, sets records retention requirements.

Adm. Order No.: OHCS 3-2008

Filed with Sec. of State: 3-31-2008

Certified to be Effective: 3-31-08

Notice Publication Date: 1-1-2008

Rules Amended: 813-220-0001, 813-220-0005, 813-220-0010, 813-220-0015, 813-220-0020, 813-220-0030, 813-220-0050, 813-220-0060

Subject: 813-220-0001 Clarifies the intent of the program. Designates the Oregon Food Bank as the agency responsible for administering the Emergency Food Assistance program in Oregon.

813-220-0005 Clarifies and updates the common definitions and terms found within the rules.

813-220-0010 Designates the Oregon Food Bank as the agency responsible for administering the Emergency Food Assistance Program in Oregon. Removes language regarding the receipt of shipments containing damage or spoiled Title II commodities and changes the language to require the Oregon Food Bank and their recipient agencies to comply with all applicable state and federal rules and regulations.

813-220-0015 Designates the Oregon Food Bank and their recipient agencies for the distribution of food commodities and allocation of funds. Stipulates the agreement terms and conditions for the Oregon Food Bank and their recipient agencies. Establishes the retention period and accessibility for records generated in the performance of the program. Sets out the responsibilities of the Oregon Food Bank and their recipients in the event of a loss of USDA commodities. Disallows the ability of the Oregon Food Bank and their recipients from

charging program recipients, in money, materials or services, to participate in the program.

813-220-0020 Clarifies the eligibility criteria for clients participating in the program.

813-220-0030 Incorporates clarification language on the allowable services. Allows the Oregon Food Bank and recipient agencies to conduct outreach to under-served areas.

813-220-0050 More clearly outlines how the funds may be used by the Oregon Food Bank and their recipients. Stipulates that the Oregon Food Bank will provide the Department with an annual audit of the Program within a specified period of time. requires that records of program activities be maintained by the Oregon Food Bank and their recipient agencies for a period of three years and be made available to specified organizations. Identifies the allowable administrative costs that may be paid from program funds.

813-220-0060 requires on-site evaluations be conducted by the Department once per fiscal year for the Oregon Food Bank and their recipients. Sets out the extend of the review process and action to be taken in the event the Oregon Food Bank or their recipient agencies are not in compliance with applicable state or federal regulations.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-220-0001

Purpose and Objectives

OAR chapter 813, division 220, is promulgated to accomplish the general purpose of ORS 458.505 to 458.545, specifically ORS 458.525 to 458.530, which designates Oregon Housing and Community Services Department (the department) as the lead agency to coordinate state efforts in meeting the problem of hunger that operates through a network of local service-provider agencies. The Department has designated the Oregon Food Bank as the agency responsible for administering the Emergency Food Assistance Program in Oregon within OAR chapter 813, division 220. The Program's objective is to provide lower-income households with food for home use. OHCS believes that receiving commodities will not create any additional barriers between clients and their need for food than is stated in statute.

Stat. Auth.: ORS 458.505 - 458.545

Stats. Implemented: ORS 458.525 - 458.530

Hist.: OHCS 3-2003, f. & cert. ef. 5-12-03; OHCS 3-2008, f. & cert. ef. 3-31-08

813-220-0005

Definitions

All terms used in OAR chapter 813, division 220, are defined in the Act, and in OAR 813-005-0005. As used in OAR chapter 813, division 220, unless otherwise indicated by the context:

(1) "Eligible Services" means services provided in accordance with the rules and regulations governing the Program.

(2) "Low Income Household" means a Household with an income at or below 185 percent of the federal poverty line.

(3) "Program" means the Emergency Food Assistance Program authorized by Public Law 98-8 and as extended by Public Law 98-92.

(4) "Regional Food Bank or (RFB) means any public or private, non-profit agency that has subcontracted with the Oregon Food Bank to relieve situations of hunger through distribution of Title II Commodities to local designated food assistance programs such as congregate meal sites, temporary shelters and emergency food pantries.

(5) "Oregon Food Bank" or (OFB) means the private, nonprofit organization designated by the Department to coordinate the distribution of Title II commodities in Oregon.

(6) "Storage and Distribution Costs" means direct costs incurred by the Department, OFB and/or RFB for the operation of the Program, including but not limited to, intrastate storage and distribution of Title II Commodities.

(7) "Title II Commodities" means commodities provided to Low Income Households under the Program.

(8) "USDA" means the United States Department of Agriculture.

Stat. Auth.: ORS 184 & 458.505 - 458.515

Stats. Implemented: ORS 458.505 - 458.515

Hist.: HR 2-1983(Temp), f. & ef. 7-28-83; HR 1-1984, f. & ef. 5-30-84; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-090-0000; HSG 8-1993, f. & cert. ef. 10-1-93; OHCS 3-2003, f. & cert. ef. 5-12-03, Renumbered from 813-220-0000; OHCS 3-2008, f. & cert. ef. 3-31-08

ADMINISTRATIVE RULES

813-220-0010

Administration

(1) The Department has, through the Master Grant Agreement, designated the OFB, a nonprofit corporation organized under ORS Chapter 65, as the Program's responsible agency to distribute Title II commodities statewide.

(2) OFB may select and subcontract with RFBs to carry out program activities at the local level.

(3) The reimbursement of federal funds shall be paid by the Department to the OFB. OFB in consultation with OHCS will calculate the proportionate share of the moneys received from the Department as reimbursement for program storage and distribution costs.

(4) OFB and their recipient agencies shall comply with all applicable state and federal rules and regulations.

Stat. Auth.: ORS 184 & 458.505 - 458.515

Stats. Implemented: ORS 458.505 - 458.515

Hist.: HR 2-1983(Temp), f. & ef. 7-28-83; HR 1-1984, f. & ef. 5-30-84; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-090-0005; HSG 8-1993, f. & cert. ef. 10-1-93; OHCS 3-2003, f. & cert. ef. 5-12-03; OHCS 3-2008, f. & cert. ef. 3-31-08

813-220-0015

Requirements Imposed on RFBs

OFB and their recipient agencies are the responsible agencies designated for the distribution of food commodities and allocation of funds. Prior to providing services, OFB and the RFBs will have entered into an agreement for such distribution and receipt of program commodities. Specific terms and conditions for doing so include:

(1) Each distribution site must collect and maintain records for each household receiving the Emergency Food Assistance Program (TEFAP) commodities for home consumption. TEFAP records should contain:

(a) The name of the household member receiving commodities,

(b) The address of the household (to the extent practicable, homeless persons, or people who have just arrived in the area, may not be able to provide an address),

(c) The number of persons in the household, and

(d) The basis for determining that the household is eligible to receive commodities for home consumption.

(A) No distribution site will collect Social Security numbers for households applying for the TEFAP program.

(B) No supporting documentation is required for an income eligibility determination for the TEFAP Program.

(2) All records must be retained for a period of three (3) years from the close of the federal fiscal year to which they pertain, or longer if related to an audit or investigation in progress. Records must be reasonably accessible at all time for use during management evaluation reviews, audits or investigations. OFB and their recipient agencies shall maintain records as required by federal and state rules in accordance with Federal Regulations 7 CFR 251.00-251-30.

(3) OFB and their recipient agencies shall be responsible for the loss of USDA commodities:

(a) Loss of commodities from improper distribution or use of any commodities or failure to provide proper storage, care, or handling.

(b) RFBs will need to immediately submit a claim to OFB and the Department if the loss of the commodities value exceeds \$250.

(4) Under no circumstances shall program recipients be required to make any payments in money materials or services in connection with participation in this program.

Stat. Auth.: ORS 183 & 458.505 - 458.515

Stats. Implemented: ORS 458.525 - 458.530

Hist.: OHCS 3-2003, f. & cert. ef. 5-12-03; OHCS 3-2008, f. & cert. ef. 3-31-08

813-220-0020

Client Eligibility

(1) Title II Commodities shall be made available to low income households. Indication of participation in such programs as Food Stamps, Temporary Assistance to Low Income Families, SSI, State General Assistance, Low-Income Energy Assistance and the Oregon Supplemental Income Program shall establish a household's eligibility under the Program. No letter or other verifying document is required.

(2) Households may establish their eligibility to participate in the Program through a self-declaration of income at or below 185 percent of the federal poverty line.

(3) Eligibility determination is made by specific eligibility screening guidelines and shall be uniform statewide. OHCS does not require any eligibility requirements other than what is required within the Federal Guidelines for 7 CFR 251.5. The criteria must be:

(a) Income for households meets the low-income poverty guidelines set forth by the income guidelines for the current year. Eligible households in need of food assistance because of inadequate household income may receive TEFAP commodities by signing a statement that declares that their income is at or below 185% of the Federal Poverty Level.

(b) Household must reside in the geographic location served by the distribution site at the time of applying for assistance, but length of residency shall not be used as an eligibility criterion. Households should not be denied service for the reason that they are in transit from one locality to another.

(4) Each distribution site must ensure households demonstrate eligibility as described in section (3) or by self-declaration.

Stat. Auth.: ORS 183 & 458.505 - 458.515

Stats. Implemented: ORS 458.505 - 458.515

Hist.: HR 2-1983(Temp), f. & ef. 7-28-83; HR 1-1984, f. & ef. 5-30-84; HR 2-1985, f. & ef. 2-5-85; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-090-0010; OHCS 3-2003, f. & cert. ef. 5-12-03; OHCS 3-2008, f. & cert. ef. 3-31-08

813-220-0030

Allowable Services

(1) OFB and their recipient agencies shall distribute Title II Commodities under the Program to low income households through emergency food box programs, congregate meal sites, temporary shelters, and emergency food pantries.

(2) OFB and their recipient agencies may conduct outreach to underserved areas so that emergency food recipients can obtain needed nutrition education and other support services.

(3) RFBs may publicize the availability of Title II Commodities and distribute those Title II Commodities in their respective service areas in a manner that a maximum number of potential eligible households are reached.

Stat. Auth.: ORS 184 & 458.505 - 458.515

Stats. Implemented: ORS 458.505 - 458.515

Hist.: HR 1-1984, f. & ef. 5-30-84; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-090-0015; HSG 8-1993, f. & cert. ef. 10-1-93; OHCS 3-2003, f. & cert. ef. 5-12-03; OHCS 3-2008, f. & cert. ef. 3-31-08

813-220-0050

Fiscal Controls

(1) OFB and their recipient agencies will use funds made available under the Federal Guidelines in 7 CFR 251.8 for direct expenses associated with the distribution of USDA commodities and commodities secured from other sources to the extent that the commodities are ultimately distributed by eligible recipient agencies. OFB will furnish reports as required by OMB Circular A-133 to provide these assurances.

(2) Internal controls including, but not limited to, the use of vouchers and receipts to substantiate all expenditures will be maintained by the OFB and recipient agencies. OHCS will conduct monitoring of expenses and the accounting system on an annual basis.

(3) The OFB shall provide the Department with an annual audit of Program and fiscal transactions within nine (9) months after the close of the fiscal audit period in accordance with OMB Circular A-133.

(4) Records of Program activities and fiscal transactions shall be maintained by the OFB and their recipient agencies for a period of three (3) years. These records shall be made available to federal, state and OFB monitoring staff upon request.

(5) The OFB and their recipient agencies shall insure that proper records are kept at all distribution sites.

(6) Fiscal reports and program reports, audit requirements, as well as storage and distribution costs for the month shall be maintained by the OFB.

(7) Each RFB shall provide monthly reports to the OFB in a format prescribed by the OFB and the Department.

(8) Allowable administrative cost may be used to pay direct expenses associated with the distribution of USDA commodities and commodities secured from other sources. Direct expenses include the following:

(a) Intrastate and interstate transport, storing, handling, repackaging, processing, and distribution of commodities.

(b) Costs associated with determination of eligibility, verification, and documentation.

(c) Costs of providing information to persons receiving USDA commodities concerning the appropriate storage and preparation of such commodities.

(d) Costs involved in publishing announcements of times and locations of distribution, and

(e) Costs of recordkeeping, auditing, and other administrative procedures required for program participation.

Stat. Auth.: ORS 184 & 458.505 - 458.515

ADMINISTRATIVE RULES

Stats. Implemented: ORS 458.505 - 458.515
Hist.: HR 2-1983(Temp), f. & cert. ef. 7-28-83; HR 1-1984, f. & cert. ef. 5-30-84; HR 2-1985, f. & cert. ef. 2-5-85; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-090-0025; HSG 8-1993, f. & cert. ef. 10-1-93; OHCS 3-2003, f. & cert. ef. 5-12-03; OHCS 3-2008, f. & cert. ef. 3-31-08

813-220-0060

Monitoring

(1) The Department will conduct on-site evaluations of the OFB once per federal fiscal year and selectively monitor OFB's recipient agencies as determined to be appropriate.

(2) Each review must encompass, as applicable, eligibility determinations, food ordering procedures, storage and warehousing practices, inventory controls, approval of distribution sites, reporting and recordkeeping requirements, civil rights policies, and copies of monitoring records of the RFB sub-distribution sites.

(3) If the Department determines that OFB or their recipient agencies are not in compliance with applicable state or federal regulations, the Department shall, within 30 working days of the close of the on-site evaluation, send OFB a corrective action notice that shall include at a minimum:

- (a) A description of the identified deficiency;
- (b) The possible causes of the deficiency;
- (c) The time frame within which that corrective action must be taken;

and

- (d) Any requirements for documenting corrective action taken.

Stat. Auth.: ORS 184 & 458.505 - 458.515

Stats. Implemented: ORS 458.505 - 458.515

Hist.: HR 2-1985, f. & cert. ef. 2-5-85; HSG 8-1992, f. & cert. ef. 7-29-92; Renumbered from 410-090-0030; HSG 8-1993, f. & cert. ef. 10-1-93; OHCS 3-2003, f. & cert. ef. 5-12-03; OHCS 3-2008, f. & cert. ef. 3-31-08

Rule Caption: Updates program name; clarifies eligible activities; requires annual report of program activities; sets records requirements.

Adm. Order No.: OHCS 4-2008

Filed with Sec. of State: 4-11-2008

Certified to be Effective: 4-11-08

Notice Publication Date: 1-1-2008

Rules Amended: 813-250-0000, 813-250-0010, 813-250-0020, 813-250-0030, 813-250-0040

Subject: 813-250-0000 Updates the program name to General Food Fund program and clarifies the intent of the program.

813-250-0010 Clarifies the common definitions and terms found within the rules.

813-250-0020 Identifies the Oregon Food Bank (OFB) as the organization that will carry out the activities of the program. Designates the Regional food Banks (RFBs) to carry out the activities at the local level. Adds additional provisions as part of the contract that RFBs will sign prior to receiving grant funds. Sets forth how the program funds may be used.

813-250-0030 Clarifies the eligible activities for use of the program funds.

813-250-0040 Requires the Oregon Food Bank to provide an annual report to the Department. Requires the regional Food Banks to provide a quarterly report to the Oregon Food Bank in a specified format. Specifies the records retention requirements for records pertaining to program activities and fiscal transactions.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-250-0000

Purpose and Objectives

OAR chapter 813, division 250, is promulgated to accomplish the general purpose of ORS 485.505 to 458.545, specifically 458.525 to 458.530. Oregon Housing and Community Services "department" have been designated as the state agency responsible for administering emergency food assistance programs in Oregon. OAR chapter 813, division 250, describes the General Fund Food Program, and authorizes the department to allocate funds for the statewide network of food banks and emergency food programs to acquire food and new food sources, build network capacities, and link emergency food clients to other services

Stat. Auth.: ORS 456.505 - 458.545

Stats. Implemented: ORS 456.505 - 458.545

Hist.: HSG 1-1994, f. & cert. ef. 3-2-94; OHCS 4-2003, f. & cert. ef. 5-12-03; OHCS 4-2008, f. & cert. ef. 4-11-08

813-250-0010

Definitions

All words and terms used in OAR chapter 813, division 250, are defined in the Act, in 813-005-0005 and 813-250-0010 and below. As used in OAR chapter 813, division 250, unless the context indicates otherwise:

(1) "General Fund Food Program (GFFP)" means state funding established by the 1993 Oregon Legislature and in accordance with OAR chapter 813, division 250.

(2) "Low Income Household" means a household with an income that does not exceed 185% of the federal poverty guideline.

(3) "Oregon Food Bank (OFB)" means the private nonprofit organization designated by the Department to coordinate distribution of food in Oregon to Low Income Households.

(4) "Regional Food Bank (RFB)" means any nonprofit agency that has subcontracted with the Oregon Food Bank to relieve situations of emergency and distress through provision of food under the GFFP to Emergency Food Organizations.

(5) "Emergency Food Organization (EFO)" means a private, public, faith based, or non-profit organization (pantry) that is subcontracted with an RFB to relieve situations of emergency and distress through provision of food under the program to low-income households.

(6) "Department" means Oregon Housing and Community Services Department (OHCS).

Stat. Auth.: ORS 456.555 & OL 1993 Ch. 725

Stats. Implemented: OL 1993 Ch. 725

Hist.: HSG 1-1994, f. & cert. ef. 3-2-94; OHCS 4-2003, f. & cert. ef. 5-12-03; OHCS 4-2008, f. & cert. ef. 4-11-08

813-250-0020

Administration

(1) Prior to receiving grant funds, a RFB shall sign a contract with the OFB. That contract shall include, but not be limited to, provisions regarding the grant amount, conditions, effective date, terms of the contract, eligible services, fiscal and program report requirements as well as audit requirements. RFBs shall recommend to the OFB the guidelines for the uses and disbursement of GFFP funds.

(2) GFFP shall be used to supplement, not supplant, existing funds used in supporting the work of the emergency food assistance network and its member agencies.

(3) Under no circumstances shall individual recipients be required to make any payments in money, materials, or services for, or in connection with, the receipt of emergency food.

(4) OFB has been designated as the organization to carry out GFFP activities to the local level by subcontracting with RFB agencies to carry out GFFP activities.

Stat. Auth.: ORS 456.555 & OL 1993 Ch. 725

Stats. Implemented: OL 1993 Ch. 725

Hist.: HSG 1-1994, f. & cert. ef. 3-2-94; OHCS 4-2003, f. & cert. ef. 5-12-03; OHCS 4-2008, f. & cert. ef. 4-11-08

813-250-0030

Eligible Activities

(1) GFFP may be used for:

(a) Capacity building activities and equipment purchases to strengthen or expand the RFB/EFO infrastructure and local support to facilitate expansion of the food supply, including the transportation of commodities.

(b) Acquisition and distribution of food in bulk form that is repackaged for household use.

(c) Linkage grants to RFBs for outreach to under-served areas so that emergency food recipients can obtain needed nutrition education and other support services.

(2) OFB or a sub-recipient of the OFB, may utilize program award funds to pay for the reasonable administrative costs of the Program.

Stat. Auth.: ORS 456.555 & OL 1993 Ch. 725

Stats. Implemented: OL 1993 Ch. 725

Stat. Auth.: ORS 456.555 & OL 1993 Ch. 725

Stats. Implemented: OL 1993 Ch. 725

Hist.: HSG 1-1994, f. & cert. ef. 3-2-94; OHCS 4-2003, f. & cert. ef. 5-12-03; OHCS 4-2008, f. & cert. ef. 4-11-08

813-250-0040

Fiscal Control/Reporting Requirements

(1) The OFB and RFBs shall maintain records that document the use of program funds for linkage activities and the receipt and distribution of commodities purchased.

(2) Records of program activities and fiscal transactions shall be maintained by the OFB and RFB for a period of three years and shall be made available to the Department or its agents upon request.

ADMINISTRATIVE RULES

(3) The OFB shall provide OHCS with an annual audit of GFFP activities and fiscal transactions within nine (9) months of the end of the fiscal audit period.

(4) The OFB shall provide OHCS with a year-end report of linkage projects carried out by RFBs and good acquisitions acquired by the OFB.

(5) RFBs shall report annually to the OFB regarding the type and amount of food purchased with GFFB funds.

Stat. Auth.: ORS 456.555 & OL 1993 Ch. 725

Stats. Implemented: OL 1993 Ch. 725

Hist.: HSG 1-1994, f. & cert. ef. 3-2-94; OHCS 4-2003, f. & cert. ef. 5-12-03; OHCS 4-2008, f. & cert. ef. 4-11-08

Rule Caption: Changes provisions relating to preservation and manufactured swelling parks; removes 80% income limitation for parks.

Adm. Order No.: OHCS 5-2008

Filed with Sec. of State: 4-11-2008

Certified to be Effective: 4-11-08

Notice Publication Date: 1-1-2008

Rules Adopted: 813-110-0013

Rules Amended: 813-110-0005, 813-110-0010, 813-110-0015, 813-110-0020, 813-110-0021, 813-110-0022, 813-110-0025, 813-110-0030, 813-110-0035

Rules Repealed: 813-110-0005(T), 813-110-0010(T), 813-110-0013(T), 813-110-0015(T), 813-110-0020(T), 813-110-0021(T), 813-110-0022(T), 813-110-0025(T), 813-110-0030(T), 813-110-0035(T)

Subject: Substantive and administrative (housekeeping) changes were incorporated within the rules as following:

813-110-0005 Adds that the provisions of the rules were established by 1995 Legislation and subsequent legislation.

813-110-0010 Updates and clarifies the common definitions and terms found within the rules.

813-110-0013 Established the loan requirements for eligibility for tax credits.

813-110-0015 Adds language that the 80 percent income level limitation does not apply to manufactured dwelling parks. In response to public comments, added that manufactured dwelling parks will meet occupancy requirements required in 813-110-0013(3).

813-110-0020 Updates language to reflect that the Application review will be consistent with the timelines outlined in Department application materials. Adds language that the 80 percent income level limitation does not apply to manufactured dwelling parks or preservation projects awarded after September 27, 2008.

813-110-0021 Requires the Department to be notified of changes in Lending Institutions.

813-110-0022 Allows the Department to set aside a portion of the Cap to meet Department identified goals and removes the requirement that the Department publicize the intent to establish a set-aside prior to initializing the set-aside.

813-110-0025 Adds language that the 80 percent income level limitation does not apply to manufactured dwelling parks.

813-110-0030 Adds that the report provided by the Lending Institution must contain the average annual balance for each loan.

813-110-0035 Administrative changes.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-110-0005

Purpose and Objectives

The rules of OAR chapter 813, division 110, are established to define and carry out the provisions of ORS 317.097 as amended by 1995 Legislation (the Act) and subsequent changes, as they pertain to the department. The department certifies projects sponsored by government entities, nonprofit corporations and certain persons as identified in 317.097 to allow a lending institution to claim a tax credit against Oregon taxes as provided in the Act. The department also certifies that balances of loans to qualifying projects fall within the cap on outstanding loans identified in 317.097(6), and designates the period, not to exceed 20 years, for which the credit will be allowed. The purpose of the program is to encourage the provision of housing for lower-income Oregonians.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720

Stats. Implemented: ORS 317.097

Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 2-1994(Temp), f. & cert. ef. 3-25-94; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08

813-110-0010

Definitions

All terms are used in OAR chapter 813, division 110, as defined in the Act, as provided in 813-005-0005 and herein. As used in these rules, unless the context indicates otherwise:

(1) "Application" means a request signed by a sponsor for certification of a project.

(2) "Cap" means the maximum amount of tax credits as set by the Legislature in ORS 317.097(6).

(3) "Certification" means the written verification by the department to a lender that a project is a qualified project for which the lending institution may claim a tax credit under the provisions of the Act.

(4) "Department" means the Oregon Housing and Community Services Department.

(5) "Firm Commitment of Financing" means an agreement by a lending institution to make a loan to a specific borrower on a specific property and which will contain all of the terms and conditions that the borrower has to satisfy before said loan can be funded. Payment of a commitment charge by the borrower to the lending institution may be required as a condition precedent to issuance of such an agreement.

(6) "Housing Payments" as used in the Act means rent or purchase price for a sponsored project.

(7) "Consolidated Plan" means the plan approved by the United States Department of Housing and Urban Development (HUD) which describes the needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs.

(8) "Lending Institution" means any bank, mortgage banking company, federal savings bank, savings bank, stock savings bank, savings and loan association, national bank, credit union or federal savings and loan association maintaining an office in this state. "Lending Institution" also includes any community development corporation, as defined in ORS 708.444(4), that is organized under the Oregon Nonprofit Corporation Law, and that meets the conditions described in 708.444(2)(a) and (e).

(9) "Letter of Intent" means a proposal for financing by a lending institution subject to the borrower's compliance with certain terms stipulated by the lending institution.

(10) "Manufactured Dwelling Park" has the meaning given that term in ORS 446.003. It is any place where four or more manufactured dwellings are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which to rent or lease space or keep space for rent or lease to any person for a charge or fee paid or to be paid for the rental or lease or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Manufactured dwelling park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to 92.010 to 92.190.

(11) "Median Income" shall be the area median family income, adjusted for family size, as published from time to time by HUD.

(12) "Nonprofit Corporation" means a corporation that is exempt from income taxes under section 501(c)(3) or (4) of the Internal Revenue Code, as amended and in effect on December 31, 2006.

(13) "Preservation Project" means housing that was previously developed as affordable housing with a contract for rental assistance from the United States Department of Housing and Urban Development or the United States Department of Agriculture and that is being acquired by a sponsoring entity. The contract for project-based rental assistance must cover at least 25 percent of all units in the project.

(14) "Project," except as defined under "manufactured dwelling park" or "preservation project," means one or more units of housing, that has been acquired, constructed, developed, or rehabilitated, including refinanced housing, which will be rented to or owned by households whose incomes are less than 80 percent of area median income. The use of a project for eligible occupants shall be maintained for the term of the credit, in accordance with the Act, unless terminated at the discretion of the department. If there is a foreclosure, deed-in-lieu, or an involuntary transfer where title transfers to the lending institution, that lending institution may dispose of the property at its sole discretion.

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(15) "Qualified Borrower" means any borrower that is a sponsoring entity that has a controlling interest in the real property that is financed by the loan. Such a controlling interest includes, but is not limited to, a controlling interest in the general partner of a limited partnership that owns the real property.

(16) "Rents Charged at the Market Interest Rate" means the rents that would be required, if the lender charged the market interest rate, in order to make the project financially feasible.

(17) "Rent Reduction" means the amount rents are reduced from the rents charged at the market interest rate as a result of the Oregon Affordable Housing Tax Credit (OAHTC) subsidy.

(18) "Rent Pass Through" means the amount of rent reduction made available to the tenants because of the reduced interest rate attributable to the OAHTC subsidy.

(19) "Sponsor" and "Sponsoring Entity" is a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government as defined in ORS 466.706, housing authority or any other person, provided that the person has agreed to restrictive covenants imposed by a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government or housing authority.

(20) "Tenant" means a renter who occupies or will occupy a unit in a project, or a homeowner who is the borrower in an owner-occupied community rehabilitation program.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720

Stats. Implemented: ORS 317.097

Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 2-1994(Temp), f. & cert. ef. 3-25-94; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08

813-110-0013

Loan Requirements

In order to be eligible for the tax credit, the loan shall be:

(1) Made to an individual or individuals who own the dwelling, who participate in an owner-occupied community rehabilitation program, and are certified by the local government or its designated agent as having an income level at the time the loan is made of less than 80 percent of the area median income.

(2) Made to a qualified borrower;

(a) Used to finance construction, development, acquisition, or rehabilitation of housing; and,

(b) Accompanied by a written certification by the department that the:

(A) Housing created by the loan is or will be occupied by households earning less than 80 percent of the area median income; and,

(B) Full amount of the savings, from the reduced interest rate provided by the lending institution, is or will be passed on to the tenants in the form of reduced housing payments, regardless of other subsidies provided to the housing project, or

(3) Made to a qualified borrower;

(a) Used to finance construction, development, acquisition, or acquisition and rehabilitation of housing consisting of a manufactured dwelling park;

(b) The housing created by the loan is or will be occupied by a significant number of households, defined as more than 30% of all households at initial tenant qualification, earning less than 80 percent of the area median income; and,

(c) Accompanied by a written certification by the department that the housing will continue to be operated as a manufactured dwelling park during the period for which the tax credit is allowed, or

(4) Made to a qualified borrower;

(a) Used to finance acquisition, or acquisition and rehabilitation, of housing consisting of a preservation project; and,

(b) Accompanied by a written certification by the department that the housing preserved by the loan:

(A) Is or will be occupied by households earning less than 80 percent of the area median income; and

(B) Has a rent assistance contract with the United States Department of Housing and Urban Development (HUD) or the United States Department of Agriculture that will be maintained by the qualified borrower. The contract must provide rental assistance to households in at least 25% of the project units.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720

Stats. Implemented: ORS 317.097

Hist.: OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08

813-110-0015

Application Requirements

(1) The Department may provide tax credits from the Oregon Affordable Housing Tax Credit (OAHTC) Program subject to the availability of credits in the program through a process which may include, but is not limited to, a first-come first-reviewed or competitive review process. At the time credits are made available, the sponsor shall submit a written application for certification to the department. The application shall provide information that includes, but is not limited to:

(a) Name, address and telephone number of the sponsor;

(b) Proof of eligible nonprofit corporation or governmental organizational status, if applicable;

(c) Background and experience of sponsor and management agent with housing for low-income persons, if applicable;

(d) A firm commitment of financing including an estimated comparable market interest rate for the proposed loan, the estimated reduced interest rate, and the estimated amount of savings;

(e) Name, address and contact person of the eligible lending institution making the loan;

(f) A description of the project, including the type of housing or program involved; number and type of housing units to be provided, the number of bedrooms; the address where the project is or will be located; and the federal, state and local agencies or organizations involved in financing or managing the project;

(g) A certification that includes, at a minimum, the statement that all information in the application is true, complete and accurately describes the project; and,

(h) The sponsor shall agree to execute restrictive covenants to be recorded at the time of loan closing. The OAHTC certificate and declaration of restrictive covenants may be processed concurrently at closing.

(2) Except for manufactured dwelling parks, demonstration that units will be occupied by households earning less than 80 percent of area median income at the time of initial occupancy. In the case of preservation projects and manufactured dwelling parks awarded after September 27, 2007, no pass-through is required for certifications produced on or after September 27, 2007. For all other projects, the sponsor shall demonstrate in writing that at the time the project is initially rented or purchased, and thereafter for the term of the credit, the sponsor will pass the benefits of the project's reduced loan interest rate to tenant households whose earnings are less than 80 percent of area median income at the time of initial tenant qualification. Manufactured dwelling parks shall meet occupancy requirements found in 813-110-0013(3).

(a) The program must be used to lower rents after all other subsidies have been applied. A project utilizing other department programs must meet the minimum requirements of those programs before the tax credits will be considered. For example, if an applicant applies for Low Income Housing Tax Credits (LIHTC) and indicates they are targeting 60% of area median income rents, the application must show the project is feasible at the targeted 60% median rents without the tax credit subsidy. The tax credit subsidy is applied to reduce rents below the 60% level. This subsidy, which in effect is the savings generated by the lower interest rate, must be passed on directly to the tenants in its entirety. However, such pass-through need not be distributed evenly among the units. Some units may receive more of a reduction than others, subsequently driving those rents down to even deeper levels.

(b) Rental units covered by Section 8 Project Based Assistance (PBA) are not eligible to be used to demonstrate pass-through savings for the program. The rent reductions are not passed on to the tenants in the form of a rent reduction from what the tenant would otherwise pay, and therefore, would not achieve pass-through savings. Projects that are partially covered with PBA may choose to use program tax credits on the remaining units to meet pass-through of interest savings as rent reductions to the tenants.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720

Stats. Implemented: ORS 317.097

Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 2-1994(Temp), f. & cert. ef. 3-25-94; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08

813-110-0020

Application Review

(1) The department shall review the application and decline or certify the project, request additional information, or reserve tax credits by timelines outlined in the various department application materials.

ADMINISTRATIVE RULES

(2) In reviewing applications for certification, the department, as appropriate, may consider, but is not limited to, the following:

(a) Sponsor, property management agent and other involved person's experience in providing low-income housing;

(b) Estimated rents charged at the market interest rate or purchase price at market interest rate for the type and location of housing to be provided;

(c) Dollar amount of estimated savings from the rent reduction;

(d) Estimated rent reduction or purchase price;

(e) How long the tax credits are needed to meet the sponsor's goals of long term affordable housing;

(f) Except for manufactured dwelling park or preservation projects awarded after September 27, 2007, the sponsor's statement that proposed rent reduction or reduced purchase price will be maintained for or offered to households whose annual incomes are less than 80 percent of area median income;

(g) Restrictive covenants which provide for, but are not limited to, affordability, income and rent restrictions; and

(h) A certifying statement from the agent for the lending institution of a local owner-occupied community rehabilitation program, if applicable.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720

Stats. Implemented: ORS 317.097

Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08

813-110-0021

Reservation in Lieu of Certification

(1) In place of a firm commitment of financing, the applicant may submit a letter of intent to lend.

(2) An application acceptable under OAR 813-110-0015 substituting a letter of intent for a firm commitment of financing which passes the department review under 813-110-0020 may, subject to the availability under the cap, receive a reservation of tax credits.

(3) A reservation shall be valid for 180 days.

(4) If a firm commitment of financing is received by the department prior to the expiration of a reservation, a certification may be issued. Once the reservation is issued, it is a confirmed reservation unless the lending institution modifies the original letter of intent. The department must be notified of the changes in lending institutions.

(5) A reservation may be extended by the department at its sole discretion.

(6) A reservation may be made for a local government entity providing a community rehabilitation program or rental project for the period of proposed financing with extensions granted at the discretion of the department.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720

Stats. Implemented: ORS 317.097

Hist.: HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08

813-110-0022

Set-Aside

(1) The department may set aside a portion of the cap for projects that meet department identified goals.

(2) The department, if directed by the State Housing Council, shall establish other set-asides to meet housing needs in various economic or geographic regions of the state from time to time.

(3) The department may request input from sponsors of projects not meeting priority.

standards to show cause for prioritizing tax credits, including criteria similar to that used in the needs assessment of Oregon's consolidated plan.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720

Stats. Implemented: ORS 317.097

Hist.: HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08

813-110-0025

Certification of Eligible Projects

(1) When the requirements of OAR 813-110-0015 are met and the total outstanding tax credits do not exceed the cap, the department shall provide certification to a lending institution that:

(a) The proposed borrower is an eligible sponsor;

(b) The proposed borrower has met the requirements of the Act and these rules to demonstrate the required benefits will be passed on to households earning less than 80 percent of area median income, except for manufactured dwelling park projects;

(c) The length of the period eligible for tax credits; and

(d) The loan does not exceed the maximum limitation for total loan balances.

(2) Such certification shall be based on the information provided by the sponsor in the application and accumulated from lender's annual reports as required by OAR 813-110-0030. The certification shall be valid only if such information, other than estimates based on interest rates and other changes made with the approval of the department, is unchanged at the time of loan closing for the project and documentation that OAHTC restrictive covenants have been recorded.

(3) To establish the use of a certificate for a fixed rate term loan, a lender shall complete the loan closing information section of the certificate and send the original to the department along with evidence that OAHTC restrictive covenants have been recorded against the project property.

(4) If OAHTC's are approved for a construction loan, a lender shall complete the loan closing information section of the certificate and send the original to the department, and may record OAHTC restrictive covenants.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720

Stats. Implemented: ORS 317.097

Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08

813-110-0030

Reporting Requirements

Lending institutions claiming the state tax credit shall be reporting to the department annually to assist the lending institution in notifying the department by May 1 of each year that the lending institution has met all requirements imposed by law to qualify for tax credits under the Act. Such notification shall not include any representation as to the performance by the sponsor. Such report shall be signed by an officer of the lending institution, and shall include, at a minimum, the name and address of the institution, name and phone number of a contact person, the number of loans for which tax credits will be claimed, the amount of credit claimed, the annual charge payment, the dates the loans were closed, the location of the projects financed by those loans, the amount loaned for each project, the outstanding balances of all loans and the average annual balance for each loan.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720

Stats. Implemented: ORS 317.097

Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08

813-110-0035

Community Rehabilitation Project Certification

(1) OAR chapter 813, division 110, does not establish requirements for certifications to households participating in a community rehabilitation program as provided in ORS 317.097(4)(b). The department does not establish rules for local governments or their designated agents for certifying participants in a community rehabilitation program under their jurisdiction.

(2) A participant in a community rehabilitation program includes both individuals and nonprofit corporations or units of local government which reloan proceeds to individuals participating in a community rehabilitation program. When a local government or its designated agent certifies a participant in a community rehabilitation program, a copy shall be sent to the department certifying that the loans included in a loan certification fall within the cap.

(3) The local government entity shall certify to the department that the local community rehabilitation standards will be met for all loans that will be included in the certified loan.

(4) A separate application is required to be submitted for each lender certification form requested.

(5) Charges as outlined in OAR 813-110-0033 will apply for each such application accompanied by the designated agent's certification and preferred listing for multiple lenders, if applicable.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720

Stats. Implemented: ORS 317.097

Hist.: HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; OHCS 7-2006, f. &

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cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08

**Oregon Liquor Control Commission
Chapter 845**

Rule Caption: Suspend temporary rules clarifying qualifications & requirements regarding tastings permitted by a distillery licensee.

Adm. Order No.: OLCC 4-2008(Temp)

Filed with Sec. of State: 3-17-2008

Certified to be Effective: 3-17-08 thru 8-15-08

Notice Publication Date:

Rules Suspended: 845-005-0430(T), 845-006-0451(T)

Subject: The Commission adopted 2 temporary rules effective February 18, 2008 regarding tastings provided by distillery licensees. The temporary rules were promulgated to implement the statutory changes resulting from the 2007 legislature's passage of Senate Bill (SB) 451, effective January 1, 2008. In pertinent part, SB 451 amended ORS 471.230 removing the restriction that permitted tastings of only brandy or pot distilled liquor. It has since come to staff's attention that there are requirements in these 2 temporary rules, (OAR 845-005-0430 & OAR 845-006-0451), that are of significant concern to current distillery licensees. Staff has determined that a more thorough examination of these requirements is warranted, and that this can better be achieved through the permanent rulemaking process already underway. The suspension of these 2 temporary rules would be in effect until permanent rules are adopted. Without these 2 temporary rules, the changes from SB 451 can be accommodated by relying on the statutory language, pending permanent rulemaking. The suspension of these 2 temporary rules will not create any inconsistency between the statutory language and the Commission's current rules.

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

845-005-0430

Qualifications for Oregon Distillery Licensee Providing Tastings of Distilled Liquor on the Distillery Premises or on Another Premises Owned or Leased by the Distillery

ORS 471.230 allows an Oregon distillery licensee to provide tastings of distilled liquor manufactured by the distillery licensee on the distillery licensee's premises or another premises owned or leased by the licensee. This rule sets the qualifications to obtain approval to provide these tastings.

(1) Definitions. For this rule and OAR 845-006-0451:

(a) "Free" means at no cost and for no financial consideration, direct or indirect, to the person obtaining the tasting.

(b) "Per day" means from 7:00 am until 2:30 am on the succeeding calendar day.

(c) "Identified tasting area" means a specific tasting area where tastings of alcohol occur. The area must be of a size and design such that the person(s) serving the taste(s) can observe and control persons in the area to ensure no minors or visibly intoxicated persons possess or consume alcohol and that other liquor laws are followed.

(d) "Manufactured by the distillery licensee" means the licensee distills, rectifies, blends, or otherwise produces the distilled liquor product on the distillery licensed premises in Oregon.

(e) "Another premises owned or leased by the distillery licensee" means the distillery licensee owns specific real estate or has a written contract which allows the licensee to exclusively possess or use specific real estate for a specified term and for a specified rent. The real estate must be off of the distillery licensee's permanently licensed premises and may not be on the premises of a retail licensee as defined in ORS 471.392(2).

(2) A distillery licensee conducting tastings of distilled liquor for retailers at an educational seminar that is not open to the public is subject to OAR 845-013-0060 and is not subject to the requirements of this rule.

(3) A distillery licensee conducting tastings of distilled liquor at a retail liquor store other than the distillery licensee's own liquor store is subject to OAR 845-015-0155 and is not subject to the requirements of this rule.

(4) A distillery licensee conducting tastings of distilled liquor at a retail liquor store that is the distillery licensee's own liquor store must follow this rule.

(5) A distillery licensee providing tastings of distilled liquor on a full on-premises licensed premises that is other than the distillery licensee's full

on-premises licensed premises is subject to OAR 845-005-0428 and is not subject to the requirements of this rule.

(6) If a distillery licensee also holds a full on-premises sales license as per ORS 471.175 on the distillery licensed premises or on another premises owned or leased by the distillery licensee, then all sale or service of alcohol for on-premises consumption at the full on-premises licensed location, including tastings, is under the full on-premises license and is not subject to this rule.

(7) A distillery licensee also holding a full on-premises sales license that provides alcohol service in connection with the pre-approved catering privilege under OAR 845-005-0405 or 845-005-0410 is providing the alcohol service under their full on-premises sales license and is not subject to the requirements of this rule.

(8) A distillery licensee who has been approved under this rule may offer free tastings of distilled liquor in accordance with the requirements of OAR 845-006-0451.

(9) Application for tastings on the distillery licensee's permanently licensed premises. A distillery licensee who intends to provide the service of distilled liquor tastings on the distillery licensed premises must make application to the Commission upon forms to be furnished by the Commission and receive prior approval from the Commission before beginning the distilled liquor tasting service. Once the Commission has given its approval for the tastings, the distillery licensee must re-apply if the licensee changes its identified tasting area. The application shall include:

(a) A floor plan showing the identified tasting area, on a form provided by the Commission; and

(b) A statement that the licensee understands and will comply with the requirements of OAR 845-006-0451.

(10) Application for tastings on another premises owned or leased by the distillery licensee. A distillery licensee who intends to provide the service of distilled liquor tastings on another premises owned or leased by the distillery licensee must make application to the Commission upon forms to be furnished by the Commission and receive prior approval from the Commission before beginning the distilled liquor tasting service. This other premises may not be on the premises of a retail licensee as defined in ORS 471.392(2). Once the Commission has given its approval for the tastings, the distillery licensee must re-apply if the licensee changes its identified tasting area. The application shall include:

(a) Either proof of ownership or the lease for the real estate for the address at which the other premises will be located;

(b) A floor plan showing the identified tasting area, on a form provided by the Commission;

(c) A statement that the identified tasting area is not on the premises of a retail licensee as defined in ORS 471.392(2);

(d) The written recommendation of the local governing body which governs the address of the premises; and

(e) A statement that the licensee understands and will comply with the requirements of OAR 845-006-0451.

(11) Liquor liability insurance requirement. A distillery licensee providing only tastings under the requirements of this rule is not required to obtain or maintain liquor liability insurance.

(12) 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.

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

Stats implemented: ORS 471.230

Hist.: OLCC 3-2008(Temp), f. 2-14-08, cert. ef. 2-18-08 thru 8-15-08; Suspended by OLCC 4-2008(Temp) f. & cert. ef. 3-17-08 thru 8-15-08

845-006-0451

Requirements for Oregon Distillery Licensee Providing Tastings of Distilled Liquor on the Distillery Premises or on Another Premises Owned or Leased by the Distillery

OAR 845-005-0430 sets the qualifications for an Oregon distillery licensee to obtain Commission approval to provide tastings of distilled liquor manufactured by the distillery licensee for consumption on the distillery licensed premises or on another premises owned or leased by the licensee. This rule sets the requirements to provide the tastings.

(1) Definitions. For this rule and OAR 845-005-0430:

(a) "Free" means at no cost and for no financial consideration, direct or indirect, to the person obtaining the tasting.

(b) "Per day" means from 7:00 am until 2:30 am on the succeeding calendar day.

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(c) "Identified tasting area" means a specific tasting area where tastings of alcohol occur. The area must be of a size and design such that the person(s) serving the taste(s) can observe and control persons in the area to ensure no minors or visibly intoxicated persons possess or consume alcohol and that other liquor laws are followed.

(d) "Manufactured by the distillery licensee" means the licensee distills, rectifies, blends, or otherwise produces the distilled liquor product on the distillery licensed premises in Oregon.

(e) "Another premises owned or leased by the distillery licensee" means the distillery licensee owns specific real estate or has a written contract which allows the licensee to exclusively possess or use specific real estate for a specified term and for a specified rent. The real estate must be off of the distillery licensee's permanently licensed premises and may not be on the premises of a retail licensee as defined in ORS 471.392(2).

(2) The tastings of distilled liquor are allowed only within the identified tasting area approved by the Commission. The identified tasting area must be on the distillery licensee's permanently licensed premises or on another premises owned or leased by the licensee. Customers may not remove the tasting from the identified tasting area.

(3) A distillery licensee may provide only free tastings of distilled liquor. The distilled liquor must be manufactured by the distillery licensee and approved by the Commission for sale in Oregon.

(4) The distilled liquor tastings may be no more than a total of two free one-quarter ounce tastings (one-half ounce total) of distilled liquor per person per day. A tasting does not include a sealed container of alcohol.

(5) Minors are permitted in the identified tasting area only if allowed by the Commission's rule on minor postings, OAR 845-006-0340.

(6) Alcohol servers who pour tastings must have valid service permits and be at least 21 years of age.

(7) Failing to obtain Commission approval as required by OAR 845-005-0430 prior to providing the service of distilled liquor tastings is a Category I violation. Violation of any other section of this rule is a Category III violation.

(8) A violation of a liquor law at another premises owned or leased by the distillery licensee is the responsibility of the distillery licensee.

Stats Auth: ORS 471.030, 471.040, 471.730(1) & (5)

Stats implemented: ORS 471.230

Hist.: OLCC 3-2008(Temp), f. 2-14-08, cert. ef. 2-18-08 thru 8-15-08; Suspended by OLCC 4-2008(Temp) f. & cert. ef. 3-17-08 thru 8-15-0-8

Rule Caption: Amend rule which adopts most current Attorney General's Model Rules of Procedure.

Adm. Order No.: OLCC 5-2008

Filed with Sec. of State: 3-25-2008

Certified to be Effective: 4-1-08

Notice Publication Date:

Rules Amended: 845-001-0007

Subject: This rule adopts the Attorney General's Model Rules of Procedure in their entirety. We are amending the effective date of the Model Rules we are adopting to reflect the most current version of the Attorney General's Model Rules of Procedure, effective January 1, 2008.

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

845-001-0007

Attorney General's Model Rules of Procedure

The Commission adopts, by reference, the Attorney General's Model Rules of Procedure, effective January 1, 2008. The Commission's supplemental rules for contested cases are in division 3 of this chapter.

[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 agency.]

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

Stats. Implemented: ORS 183.341(1)

Hist.: LCC 10-1986, f. 6-4-86, ef. 7-1-86; OLCC 4-1989, f. 4-28-89, cert. ef. 7-1-89; OLCC 9-1992, f. 10-7-92, cert. ef. 12-1-92; OLCC 1-1994, f. & cert. ef. 5-2-94; OLCC 9-1995, f. 12-4-95, cert. ef. 1-1-96; OLCC 3-1999, f. 2-16-99, cert. ef. 3-1-99; OLCC 8-2001, f. 8-15-01, cert. ef. 9-1-01; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04; OLCC 4-2007, f. 3-22-07, cert. ef. 4-1-07; OLCC 5-2008, f. 3-25-08, cert. ef. 4-1-08

Oregon Patient Safety Commission Chapter 325

Rule Caption: Re-establishes a Notice Rule for the Oregon Patient Safety Commission.

Adm. Order No.: PSC 1-2008

Filed with Sec. of State: 4-14-2008

Certified to be Effective: 4-14-08

Notice Publication Date: 3-1-2008

Rules Adopted: 325-001-0000

Rules Amended: 325-001-0001

Subject: Retroactively adopts a rule that was previously submitted to the Secretary of State's Office. That rule, submitted September 26, 2005, established a procedure to give interested parties a reasonable opportunity to be notified of the Patient Safety Commission's intent to adopt, amend, or repeal a rule.

This permanent rule replaces a temporary rule and is needed to correct a filing error. With the exception of effective date, this rule is identical to the one filed in 2005.

Rules Coordinator: Jim Dameron—(503) 224-9226

325-001-0000

Notice of Rule

OAR 325-001-0001 is made retroactive to September 26, 2005

Stat. Auth.: ORS 442.820 & Sec. 9 Ch. 686 OL 2003

Stats. Implemented: ORS 183.341(4)

Hist.: PSC 1-2008, f. & cert. ef. 4-14-08

325-001-0001

Notice Rule

Before adopting, amending, or repealing any permanent rule, the Patient Safety Commission will give notice of its 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 providing a copy of the notice to persons on the Patient Safety Commission's distribution list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule;

(3) By providing a copy of the notice to legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule; and

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

(a) The Oregon Association of Hospitals and Health Systems;

(b) The Oregon Health Care Association;

(c) Oregon State Pharmacy Association;

(d) Oregon Health Care Purchasers Coalition;

(e) Oregon Medical Association;

(f) The Oregon Board of Pharmacy;

(g) Oregon Nurses Association;

(h) Affected health care facilities and pharmacies;

(i) Capitol Press Room.

Stat. Auth.: ORS 442.820 & Sec. 9 Ch. 686 OL 2003

Stats. Implemented: ORS 183.341(4)

Hist.: PSC 3-2005, f. & cert. ef. 9-26-05; PSC 5-2007(Temp), f. & cert. ef. 10-19-07 thru 4-11-08; PSC 1-2008, f. & cert. ef. 4-14-08

Oregon Public Employees Retirement System Chapter 459

Rule Caption: Modifications to permit creditable service for certain retroactive payments and revise provisions regarding retroactive payments.

Adm. Order No.: PERS 1-2008(Temp)

Filed with Sec. of State: 4-2-2008

Certified to be Effective: 4-2-08 thru 9-26-08

Notice Publication Date:

Rules Amended: 459-010-0014, 459-010-0042

Subject: The proposed rule modifications allow for creditable service in limited circumstances consistent with the current statutory structure. More specifically:

OAR 459-010-0014: This rule provides standards used to determine the accrual of creditable service in the PERS chapter 238 Program. This rule was modified to reference the accrual of creditable service incident to a retroactive payment under OAR 459-010-0042(4)

OAR 459-010-00042: 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 changes that clarify that payments allocated to periods of non-membership may not be used to determine 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

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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

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 cred-

itable 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

Rule Caption: Amend administrative review and appeal processes rules to clarify employer grievance procedures.

Adm. Order No.: PERS 2-2008

Filed with Sec. of State: 4-2-2008

Certified to be Effective: 4-2-08

Notice Publication Date: 1-1-2008

Rules Amended: 459-001-0030, 459-001-0035, 459-001-0040

Subject: 459-001-0030: Modifies rule to address persons only.

459-001-0035: Clarifies the contested case hearings process.

459-001-0040: Deletes unnecessary language and clarifies Board and staff actions.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-001-0030

Review of Staff Actions and Determinations Regarding Persons

(1) For purposes of this rule, "Director" means the executive director of PERS, or an administrator appointed by the executive director.

(2) Request for review. Any person may file with the Director a request for review of a staff action or determination, except as provided for in ORS 238.450 or in Board rules on disability retirement. The request must be filed within 60 days following the date the staff action or determination is sent to the person requesting review.

(3) Informal conferences. Informal conferences are available as an alternative means that may achieve resolution of any matter under review. A request for an informal conference does not change the time limit to file a request for review.

(4) Criteria for request. A request for review of a staff action or determination must be in writing and set forth:

(a) A description of the staff action or determination for which review is requested;

(b) A short statement of the manner in which the action is alleged to be in error;

(c) A statement of facts that are the basis of the request;

(d) Reference to applicable statutes, rules or court decisions relied upon;

(e) A statement of the relief requested; and

(f) A request for review.

(5) Denial of request. The Director may deny any request for review within 45 days of receipt of the request:

(a) If the request does not contain the information required under section (4) of this rule; or

(b) When, in the Director's view, there is no bona fide dispute of material fact, the pertinent statutes and rules are clear in their application to the facts, and there is no material administrative error.

(6) If a request is denied by the Director because it does not contain the information required under section (4) of this rule, a requester will have one opportunity to correct that deficiency and resubmit a request for review within 45 days of the date of denial.

(7) Approval of request. If the request for review is granted, the Director must issue a written determination within 45 days of receipt of the request after:

(a) Considering the request;

(b) Directing staff to reconsider; or

(c) Directing staff to schedule an informal conference.

(8) Extension of deadline. Any 45-day deadline within this rule may be extended upon request in writing for an additional 45 days.

(9) Resolution process.

(a) In lieu of issuing a written determination, the Director may direct staff to schedule a formal contested case hearing. The hearing must be

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conducted in accordance with the Attorney General's Model Rules of Procedure.

(b) If a request is denied or the Director's determination is not the relief sought by the person, and the Director did not cause a contested case hearing to be scheduled, a person may file with the Board a request for a contested case hearing pursuant to the Attorney General's Model Rules of Procedure.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 183.413 - 183.470
Hist.: PERS 4-1990, f. & cert. ef. 3-26-90; PERS 5-1990, f. & cert. ef. 12-3-90; PERS 10-2001, f. 12-14-01, cert. ef. 1-1-02; PERS 2-2008, f. & cert. ef. 4-2-08

459-001-0035

Contested Case Hearing

(1) Request for a contested case hearing. To obtain review of any determination made under OAR 459-001-0030 or 459-001-0032 for which a contested case hearing has not been held, the party must file with the Board a request for a contested case hearing. The request must be filed within 45 days following the date of the Director's determination.

(2) Informal conferences. Informal conferences are available as an alternative means that may achieve resolution of any matter under review. A request for an informal conference does not relieve a person of the requirements for timely filing of a request for a contested case hearing.

(3) Criteria for request. The request for a contested case hearing must be in writing and set forth:

- (a) A description of the determination for which review is requested;
- (b) A short statement of the manner in which the determination is alleged to be in error;
- (c) A statement of facts that are the basis of the request;
- (d) Reference to applicable statutes, rules or court decisions upon which the requester relies;
- (e) A statement of the action the request seeks; and
- (f) A request for a hearing.

(4) The Director, or an administrator appointed by the Director, may direct the staff to schedule a formal contested case hearing or develop a recommendation to deny the member's request to be presented to the Board. The Board may then deny a request for a hearing when it has decided, in consultation with legal counsel, that the Board has no authority to grant the relief requested.

(5) The hearing must be conducted in accordance with the Attorney General's Model Rules of Procedure. Parties to the hearing will include the requester, any other person named as a party, and any other person who petitions to participate and is determined to have an interest in the outcome of the proceeding.

(6) The Board generally deliberates and decides on final orders during regularly scheduled board meetings. The Board may instead deliberate and decide at any other time and place allowed by law, as determined on a case-by-case basis, such as electronically or via a telephone conference.

Stat. Auth.: ORS 238.650, 183.464 & 183.600 - 183.690
Stats. Implemented: ORS 183.413 - 183.470
Hist.: PERS 4-1990, f. & cert. ef. 3-26-90; PERS 10-2001, f. 12-14-01, cert. ef. 1-1-02; PERS 21-2005, f. & cert. ef. 11-1-05; PERS 11-2006, f. & cert. ef. 6-26-06; PERS 2-2008, f. & cert. ef. 4-2-08

459-001-0040

Petitions for Reconsideration

(1) Petition for reconsideration. Before initiating any judicial review of a final order in a contested case, a party may file with the Board a petition for reconsideration. If the party chooses to file a petition, it must be filed within 60 days following the date the order becomes final. Written argument from a petitioner must be submitted with the petition.

(2) Board action. The Board may either grant or deny a petition for reconsideration within 60 days of filing. If the Board does not grant or deny the petition within 60 days of filing, the petition shall be deemed denied.

(3) Staff action. If the petition for reconsideration is granted, the Board must enter a new final order in accordance with OAR 137-003-0675 and may consider written argument from the Director on the merits of the petition. The Board may schedule oral argument in its discretion.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 183.413 - 183.470 & 183.482
Hist.: PERS 4-1990, f. & cert. ef. 3-26-90; PERS 10-2001, f. 12-14-01, cert. ef. 1-1-02; PERS 11-2006, f. & cert. ef. 6-26-06; PERS 2-2008, f. & cert. ef. 4-2-08

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Rule Caption: New rules addressing review and appeal process for employers to follow in agency disputes.

Adm. Order No.: PERS 3-2008

Filed with Sec. of State: 4-2-2008

Certified to be Effective: 4-2-08

Notice Publication Date: 12-1-2007

Rules Adopted: 459-001-0032

Subject: Staff developed this new rule that incorporates the provisions originally embedded in OAR 459-001-0030 to address employer disputes. These separate provisions would provide employers the option they requested to have their disputes resolved through arbitration, mediation, or contested case, at their election.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-001-0032

Review of Staff Actions and Determinations Regarding Public Employers

(1) For purposes of this rule, "Director" means the executive director of PERS, or an administrator appointed by the executive director.

(2) Request for review. Any public employer may file with the Director a request for review of a staff action or determination, except as provided in ORS 238.450 or in Board rules on disability retirement. The request must be filed within 60 days following the date the staff action or determination is sent to the public employer requesting review.

(3) Informal conferences. Informal conferences are available as an alternative means that may achieve resolution of any matter under review. A request for an informal conference does not change the time limit to file a request for review.

(4) Criteria for request. A request for review of a staff action or determination must be in writing and set forth:

- (a) A description of the staff action or determination for which review is requested;
- (b) A short statement of the manner in which the action is alleged to be in error;
- (c) A statement of facts that are the basis of the request;
- (d) Reference to applicable statutes, rules or court decisions relied upon;
- (e) A statement of the relief requested; and
- (f) A request for review.

(5) Denial of request. The Director may deny any request for review within 45 days of receipt of the request:

(a) If the request does not contain the information required under section (4) of this rule; or

(b) When, in the Director's view, there is no bona fide dispute of material fact, the pertinent statutes and rules are clear in their application to the facts, and there is no material administrative error.

(6) If a request is denied by the Director because it does not contain the information required under section (4) of this rule, a requester will have one opportunity to correct that deficiency and resubmit a request for review within 45 days of the date of denial.

(7) Approval of request. If the request for review is granted, the Director must issue a written determination within 45 days of receipt of the request after:

- (a) Considering the request;
- (b) Directing staff to reconsider; or
- (c) Directing staff to schedule an informal conference.

(8) Extension of deadline. Any 45-day deadline within this rule may be extended upon request in writing for an additional 45 days.

(9) Resolution process for state agency employers. If a request is denied or the Director's determination is not the relief sought by the employer, and the employer is a state agency subject to the dispute resolution provisions of OAM policy 35.70.30.PO, the Interagency Dispute Resolution Process, then the dispute must be resolved in accordance with that policy.

(10) Resolution process for non-state agency employers. If a request is denied or the Director's determination is not the relief sought by the employer, and the employer is not a state agency subject to the dispute resolution provisions of OAM policy 35.70.30.PO, then the employer can request the issue to be addressed by arbitration, mediation, or a contested case.

(a) If the employer requests arbitration, PERS and the employer will as closely as possible parallel the process outlined in OAM policy 35.70.30.PO for state agency employers.

(b) If the employer requests a contested case, the process will be conducted pursuant to the Attorney General's Model Rules of Procedure.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 183.413 - 183.470
Hist.: PERS 3-2008, f. & cert. ef. 4-2-08

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Rule Caption: Addresses employer concerns about invoicing for employee contributions.

Adm. Order No.: PERS 4-2008

Filed with Sec. of State: 4-2-2008

Certified to be Effective: 4-2-08

Notice Publication Date: 1-1-2008

Rules Amended: 459-009-0130

Subject: The proposed rule modifications impose an obligation on PERS to pay for earnings associated with any periods which occur after PERS has returned or failed to accept the contributions in question from the employer.

The proposed rule modifications also designate that any earnings PERS pays would be charged against the earnings available for distribution in the year PERS finally posts those earnings to the member's account.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-009-0130

Employee Contributions for Prior Periods

(1) When employee contributions (ORS 238.205) are determined by PERS to be required for salary paid in previous calendar years, or allocated to such years pursuant to ORS 238.005(21)(b)(C) or ORS 238A.005(16)(b)(E), PERS must notify both the employee and the employer of the amount of contributions required, the pay period and salary for which the contributions are to be paid, and the information relied upon by PERS in determining that the contributions are due. The employer must forward the required contributions to PERS.

(2) The notice provided under section (1) will also include a determination of the amount of earnings owed on the contributions, the amount of earnings the employer must pay, and the amount of earnings PERS will pay.

(a) In determining the amount of earnings the employer must pay, PERS will not include earnings attributable to periods after the date the employer submitted the contributions if:

(A) The employer submitted the contributions before PERS sent the notice that they were owed, and

(B) PERS returned or failed to accept the contributions.

(b) Any earnings paid by PERS will be charged to current year earnings in the year that the earnings are actually credited to the employee's account.

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 238.200 & 238.705

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996; f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(4); PERS 10-1998, f. & cert. ef. 6-17-98; PERS 4-2008, f. & cert. ef. 4-2-08

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Rule Caption: Minor amendment allows the Emergency Withdrawal Appeals Committee to meet sooner than currently allowed.

Adm. Order No.: PERS 5-2008

Filed with Sec. of State: 4-2-2008

Certified to be Effective: 4-2-08

Notice Publication Date: 1-1-2008

Rules Amended: 459-050-0040

Subject: Minor modification to allow the Oregon Savings and Growth Plan (OSGP) Emergency Withdrawal Appeals Committee to meet sooner than currently allowed and to meet by phone or in person.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-050-0040

Unforeseeable Emergency Withdrawal Appeals Committee

(1) Purpose. The Unforeseeable Emergency Withdrawal Appeals Committee (the Committee) shall evaluate appeals denied by the Deferred Compensation Manager or designee authorized to take action on the Manager's behalf for the distribution of deferred compensation on the basis of claims of unforeseeable emergency in compliance with the Internal Revenue Code, Section 457, 26 USC 457, and the provisions of OAR 459-050-0150. The Committee shall formally approve or deny each appeal based on the merits of the appeal.

(2) Committee composition. The Committee shall consist of not fewer than three persons.

(a) One person shall be a PERS staff member from the Deferred Compensation Program.

(b) Two persons shall be PERS staff members from other than the Deferred Compensation Program.

(3) Committee meetings. The Committee shall meet upon the call of the Manager of the Deferred Compensation Program no later than 14 calendar days following receipt of an appeal. The Committee may meet by phone or in person. The Committee shall evaluate the participant's written request, emergency withdrawal application, financial information, and all related documentation submitted for compliance with 26 USC 457 and the provisions of OAR 459-050-0150.

(4) Appeal approval. If an appeal is approved, the Committee authorizes the Manager to release the funds within 30 calendar days of approval.

(5) Appeal denial. Within seven calendar days of the Committee's denial, the requestor may request an informal conference with the Deferred Compensation Manager or designee authorized to take action on the Manager's behalf.

(6) Request for review. The requester may submit a request for review of the Committee's determination to the Director of PERS and must do so within 30 calendar days of the Committee's denial. The request must be in writing and include:

(a) A description of the staff action or determination for which review is requested;

(b) A short statement of the manner in which the action is alleged to be in error;

(c) A statement of facts that are the basis of the request;

(d) Reference to applicable statutes, rules or court decisions upon which the person relies;

(e) A statement of the relief the request seeks; and

(f) A request for review.

(7) Director's determination. Within 30 calendar days of receiving a request for review, the Director shall issue a written determination either approving or denying the unforeseeable emergency withdrawal.

Stat. Auth: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 2-1995, f. 10-13-95, cert. ef. 11-1-95; PERS 5-2000, f. & cert. ef. 8-11-00; PERS 28-2004, f. & cert. ef. 11-23-04; PERS 5-2008, f. & cert. ef. 4-2-08

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Rule Caption: Clarify administration of additional creditable service and retirement credit purchases for disability retirement.

Adm. Order No.: PERS 6-2008

Filed with Sec. of State: 4-2-2008

Certified to be Effective: 4-2-08

Notice Publication Date: 1-1-2008

Rules Amended: 459-015-0055

Subject: The proposed rule modifications clarify the administration of purchases of additional creditable service and retirement credit by members approved for disability retirement, and their beneficiaries.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-015-0055

Selection of Benefit Option and Commencement of Allowance

(1) Upon filing an application for a disability retirement allowance, the member may make a preliminary designation of beneficiary and a preliminary selection of benefit option.

(a) A member may choose from retirement Options 1, 2, 2A, 3, 3A, 15 year certain or refund annuity as set forth in ORS 238.300 and 238.305, or an optional disability retirement allowance under ORS 238.325.

(b) A member may not choose a lump-sum option.

(2) Within 90 days following the Director's, or the Director's designee's, approval of the application for disability retirement allowance, the member must complete a final designation of beneficiary and selection of benefit option on forms provided by PERS. Receipt of the final forms will supercede any preliminary beneficiary designation or benefit option.

(a) The final option selected applies only to the corresponding time period the member is receiving a disability retirement allowance.

(b) The beneficiary designation or benefit option may be changed up to 60 days after the date of the first benefit payment as provided in ORS 238.325(2).

(c) If a member's disability retirement allowance is canceled, the option selected for the purposes of that disability retirement allowance is canceled and a new option may be selected upon a subsequent disability or a service retirement.

(3) If the member does not complete a final selection of benefit option within 90 days following the Director's, or the Director's designee's, approval of the application for disability retirement allowance:

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(a) The benefit will be the benefit as set forth under ORS 238.320(1); and

(b) The latest beneficiary designation on file for the PERS Chapter 238 Program will be used to determine the default beneficiary. If no designation exists, the beneficiary will be as provided for under ORS 238.390(2).

(4) Purchases. If a member is eligible to purchase additional creditable service or retirement credit under ORS Chapter 238, the member must submit payment for the purchase(s) at the time the member submits the final selection of benefit option form required under section (2) of this rule.

(5) The payment of a disability retirement allowance shall commence within ten days following receipt by PERS of all of the following items, or the date the first payment is due, as set forth in Section (6) of this rule, whichever is later:

(a) From the member:

(A) Final designation of beneficiary and selection of benefit option form;

(B) Proof of member's age;

(C) Proof of age for the designated beneficiary if a joint survivor option is elected; and

(D) Spousal consent form.

(b) From the employer:

(A) Financial; and

(B) Demographic information indicating the member has separated from PERS-covered employment.

(6) A disability payment is first due on the later of:

(a) The first of the calendar month in which the member files a complete application for disability benefits with PERS; or

(b) The first of the month following the first full calendar month after final payment by the employer of any wages or paid leave benefits to the member, excluding any cash payoff of accrued vacation or compensatory time; or

(c) The first of the calendar month following the date that the disability application is approved by the Director.

(d) Notwithstanding subsections (a), (b) and (c) of this section, no payment shall be made prior to the end of the period of 90 consecutive days beginning with the date of disability as defined in OAR 459-015-0001(4); and

(e) A disability retirement allowance shall be retroactive to the effective date of disability.

(7) If PERS cannot calculate the actual disability benefit payment, an estimated payment will be made until PERS receives all the necessary information needed to calculate the actual benefit payment. The payment will be made retroactive to the effective date of disability if the benefits become due before the 90 consecutive day period of incapacitation has elapsed.

(a) If the estimated payment results in an underpayment of \$10 or more a month, the member will receive interest based on the provisions set forth in OAR 459-007-0015.

(b) If the estimated payment results in an overpayment of any amount, the overpayments may be recovered by decreasing the monthly benefit amount until the difference between the amount the member received and the amount the member should have received is recovered.

(8) Within the 60 day period following the issue date of the first actual (not estimated) benefit payment, the member may change their benefit option. The Option change will be retroactive to the effective disability retirement date.

(9) Minimum disability benefit. A disability benefit will not be less than \$100 per month under the non-refund Option 1 benefit or the amount the member would have received for service retirement, if eligible, whichever is higher.

(10) In the event a member applying for a disability retirement allowance dies prior to the Director's approval of the application:

(a)(A) If the member has made a preliminary benefit option election, the preliminary election shall be effective upon the Director's approval of the application for disability retirement.

(B) If the deceased member was eligible to purchase additional creditable service or retirement credit under ORS Chapter 238, the beneficiary, if any, designated in the preliminary election may make the purchase(s) by submitting the required forms and payment within 90 days from the date the disability application is approved.

(b) If the member has not made a preliminary benefit option election, the member will be considered as having died before retirement.

(A) If the beneficiary designated under ORS 238.390(1) is the surviving spouse, the surviving spouse may, within 90 days from the date the

disability application is approved, elect to have either Option 2 or 3 disability benefits or pre-retirement death benefits, as provided in ORS 238.390 or 238.395, if eligible.

(i) Regardless of the election made by the surviving spouse under paragraph (b)(A) of this section, all benefits will cease upon the surviving spouse's death.

(ii) If the deceased member was eligible to purchase additional creditable service or retirement credit under ORS Chapter 238, a surviving spouse who elects disability benefits under paragraph (b)(A) of this section, may make the purchase(s) by submitting the required forms and payment at the time of the election.

(B) If the beneficiary designated under ORS 238.390(1) is not the surviving spouse, the beneficiary will receive pre-retirement death benefits as provided in ORS 238.390 or 238.395, if eligible.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.320, 238.325 & 238.330

Hist.: PERS 2-1992, f. & cert. ef. 1-14-92; PERS 15-2005, f. & cert. ef. 10-3-05; PERS 6-2008, f. & cert. ef. 4-2-08

Rule Caption: Adopt the Attorney General's model Rules of Procedure.

Adm. Order No.: PERS 7-2008

Filed with Sec. of State: 4-4-2008

Certified to be Effective: 4-4-08

Notice Publication Date: 4-1-2008

Rules Amended: 459-001-0005

Subject: OAR 459-001-0005 adopted the Attorney General's Model Rules of Procedure that became effective on January 1, 2006 as the PERS Board's rules of procedure. The Model Rules were updated on January 1, 2008; the proposed rule modification adopts this new version as the Board's rules of procedure.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-001-0005

Model Rules of Procedure

The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, as adopted and effective January 1, 2008, are adopted as rules of procedure of the Public Employees Retirement Board, except as modified by other rules of the Board.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Oregon Public Employees Retirement System.]

Stat. Auth.: ORS 183.341 & 238.650

Stats. Implemented: ORS 238.005 - 238.715 & 237.410 - 237.620

Hist.: PER 11, f. 4-18-72, ef. 5-1-72; PER 12, f. 3-14-74, ef. 4-11-74; PER 13, f. & ef. 10-26-72; Renumbered from 459-030-0005; PER 2-1978, f. & ef. 11-2-78; PER 1-1980, f. & ef. 2-15-80; PER 1-1986, f. & ef. 7-7-86; PERS 2-1990, f. & cert. ef. 1-8-90; PERS 1-1992, f. & cert. ef. 1-14-92; PERS 4-1994, f. & cert. ef. 5-10-94; PERS 3-1995, f. 11-14-95, cert. ef. 11-15-95; PERS 1-1998, f. & cert. ef. 3-16-98; PERS 4-2000, f. & cert. ef. 7-14-00; PERS 11-2001, f. 12-14-01, cert. ef. 1-1-02; PERS 25-2004, f. 11-23-04, cert. ef. 12-1-04; PERS 10-2006, f. & cert. ef. 6-26-06; PERS 7-2008, f. & cert. ef. 4-4-08

Oregon State Lottery

Chapter 177

Rule Caption: Amends Scratch-itSM ticket game rules to allow for multipage Scratch-itSM tickets.

Adm. Order No.: LOTT 1-2008

Filed with Sec. of State: 3-21-2008

Certified to be Effective: 3-31-08

Notice Publication Date: 12-1-2007

Rules Amended: 177-046-0110, 177-046-0170, 177-050-0002, 177-050-0020, 177-050-0024, 177-050-0025, 177-050-0027, 177-050-0037, 177-050-0070

Rules Repealed: 177-046-0110(T), 177-046-0170(T), 177-050-0002(T), 177-050-0020(T), 177-050-0024(T), 177-050-0025(T), 177-050-0027(T), 177-050-0037(T), 177-050-0070(T)

Subject: The Lottery introduced a multi-page Scratch-itSM ticket. The current rules were specific to single page Scratch-itSM tickets. The amendments address the differences between single page and multi-page Scratch-itSM tickets. Other changes include updating trade and service mark references, and clarifying the Director's authority to pay prizes on Scratch-itSM tickets.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

ADMINISTRATIVE RULES

177-046-0110

Payment of Prizes

(1) **General:** All winning Lottery tickets or shares may be presented to the Oregon State Lottery for payment. Winning tickets or shares for prizes of \$600 or less may also be presented for payment to the appropriate Lottery retailer specified in the applicable game rule.

(2) **Mailing Address:** Winners who mail a winning Lottery ticket or share to the Lottery must sign the Lottery ticket or share in the designated area on the ticket or share, write the claimant's mailing address in the place indicated on the ticket or share, and mail it to the Oregon State Lottery, P.O. Box 14515, Salem, Oregon 97309. Registered mail is recommended.

(3) **Headquarter's Address:** Winners who present a claim in person at the Lottery may do so by bringing the winning Lottery ticket or share to the Oregon State Lottery, Player Services, 500 Airport Road SE, Salem, Oregon 97301 during Lottery business hours.

(4) **Retailer Validation and Payment of Prizes of \$600 or Less:** To determine whether a Lottery ticket or share presented for payment entitles the holder to a prize, a retailer must validate the claim with the Lottery by scanning the bar code or manually entering the bar code number printed on each Lottery ticket or share into equipment provided by the Lottery, and, if authorized by the Lottery, pay the player the prize amount due.

(a) **Retailer Payment:** A retailer is authorized to pay a prize of \$600 or less and shall pay that prize in cash or check, or any combination thereof.

(b) **Lottery Payment:** If a retailer's prize payment check is dishonored, the player may seek payment from the Lottery by presenting a copy of the dishonored check to the Oregon State Lottery, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours, or by mailing a copy of the dishonored check with a winner claim form to the Oregon State Lottery, P.O. Box 14515, Salem, Oregon 97309. If the Lottery determines that payment of the prize is authorized, the retailer has not paid the prize, and it is unlikely that the retailer will pay the prize, the Lottery may then issue a check to the player in the amount of the prize due less any applicable tax withholding.

(c) **Retailer Sanction:** A retailer that pays a prize with a check that is dishonored may be subject to termination of the Lottery Retailer Contract.

(5) **Lottery Validation and Prize Payment:** Upon validation of a winning Lottery ticket or share presented to the Lottery for payment, the Director may pay the amount of the prize to the player less any applicable tax withholding. If the ticket or share is determined to be invalid, or a non-winning ticket or share, or the claim is invalid, the Director shall deny the claim and inform the player.

(a) **Lottery Prize Payment of \$600 or Less:** Payment may be made by check or in cash, or any combination thereof. Cash prize payments are limited to \$50 per person per day. Payment may be made in person or by mail, except that the Lottery will not mail cash.

(b) **Lottery High Tier Prize Payments:** For prize payments valued greater than \$600, the Lottery will pay a winning ticket or share by check, or subject to OAR 177-010-0050, may pay the prize in merchandise if the prize is merchandise.

(6) **Claiming Lottery Tickets or Shares Jointly:** If more than one name appears in the designated area on a Lottery ticket or share, or if a Lottery ticket or share is owned by two or more persons, the prize must be claimed in accordance with the following:

(a) **General:** All persons claiming ownership of the winning Lottery ticket or share must complete and sign the Lottery's request and release form. Each of the persons signing the form must indicate each person's proportionate share of the prize. Each person must receive at least \$1.00. At least one of the persons claiming ownership of the ticket or share must sign the ticket or share. That person's signature must also appear on the request and release form. If a winning ticket or share is mailed to the Lottery with multiple signatures on it, the Director will mail the request and release form to the claimants.

(b) **Deceased Signatories:** A deceased signatory who dies before signing the request and release form will be presumed to have an ownership interest equal to that of the other signatories. In the event there is a deceased signatory, the Director may withhold payment for 60 days from the date of validation to allow co-owners the opportunity to seek a declaratory ruling from a court.

(c) **Relinquishment of Interest:** When a person who has signed a Lottery ticket or share wishes to relinquish the person's ownership interest in the Lottery ticket or share, that person must sign the Lottery's release of ownership form relinquishing the person's ownership interest. In no event will a person be permitted to relinquish ownership interest once it is determined that the person owes money for child support or other legal attach-

ment has taken place. Once the Lottery receives the release of ownership form, it is irrevocable.

(d) **Issuance of Prize Checks to Multiple Owners:** If a validated winning Lottery ticket or share is claimed by multiple owners who are sharing a single prize, the Director will issue to each person claiming a share of the prize amount, a check for the portion of the prize amount claimed by each multiple owner, the total not to exceed the total prize amount. No cash payments will be made to multiple owners. However, the Director reserves the right to issue a single prize check to an individual whose name appears on the ticket or share instead of multiple prize checks to the owners of the ticket or share if the value of each individual prize check would be less than \$50 or if the number of persons claiming a share of the prize exceeds 100 people. The Lottery shall pay multiple winners of a Lottery prize only at the Lottery Headquarters in Salem. Lottery retailers are not authorized to pay multiple winners who share a single prize.

(e) **Conflicting Information or Discrepancies:** If there is conflicting information or discrepancies between the names on a winning Lottery ticket or share and the names on a claim form, the Lottery may withhold prize payment until the owners resolve the conflicting information. Discrepancies include, but are not limited to: Names or addresses scratched out or erased, or unreadable or altered names or addresses.

(f) **Investigations:** At the discretion of the Director, the Lottery may conduct an investigation to aid in the determination of the rightful owners prior to payment of any prize.

(g) **Determinations:** The Director's decisions regarding the determination of a winning Lottery ticket or share, or the determination of the rightful owner or owners of a prize, or of any other dispute or matter arising from payment or awarding of prizes are final and binding on all parties.

(7) Payment of Prizes Donated Anonymously to Non-Profit Groups and Others:

(a) **General:** The Director may pay a prize according to written anonymous instructions received with a winning Lottery ticket or share. The recipient must be a natural person or a non-profit group as described in Section 501(c)(3) of the Internal Revenue Code.

(b) **Adult Recipient:** If the intended recipient is a natural person of majority, the Director will contact the person and make payment to the person in accordance with the anonymous written instructions.

(c) **Minor Recipient:** If the intended donation benefits a natural person who is a minor, the Director will make payment in accordance with the Oregon Uniform Transfers to Minors Act, Oregon Revised Statutes (ORS) 126.805 to 126.886.

(d) **Non-Profit Group as Recipient:** If the intended recipient qualifies as a non-profit group as described in Section 501(c)(3) of the Internal Revenue Code, the Director will make payment only as follows:

(A) **Identification of Recipient:** The Director will attempt to identify and contact the intended recipient. The intended recipient shall designate in writing an agent, (a natural person) to act on its behalf and to receive the prize payment on behalf of the recipient. The Director shall confirm both the written authorization and the agent. An intended recipient is encouraged to select a bonded agent.

(B) **Appearance:** The agent shall appear in person at the Lottery Headquarters in Salem to claim the prize payment on behalf of the intended recipient. The Director may confirm to the Director's satisfaction that the agent is authorized to accept the donation in the agent's own name on behalf of the intended recipient.

(C) **Signature and Payment:** Subsequent to receipt of acceptable identification, along with a completed claim form from the agent, and the Director's review and approval, the agent, in the presence of a duly authorized Lottery official, shall sign the agent's own name on the winning Lottery ticket or share in the place indicated on the ticket or share and immediately return it to the Lottery. The Director shall then make payment to the agent less any applicable tax withholding.

(D) **Identification of Donor:** If the Director can reasonably identify the donor, the Director shall not make payment as specified above, but shall instead contact the donor and notify the donor to retrieve the Lottery ticket or share upon presenting acceptable proof of identification. The donor may retrieve the winning ticket or share in person at the Lottery's Headquarters in Salem upon the presentation of acceptable proof of identification. The prize, less any applicable tax withholding, will be paid to the donor upon validation of the winning ticket or share.

(e) **Win for Life Prize:** If the winning Lottery ticket received is a Win for Life top prize of \$1,000 a week for life, the prize paid will be the lump sum guaranteed five year payment under the Win for Life game rules.

(f) **Forfeiture of Unclaimed Prize:** In the event that the Director is unable to locate the intended recipient or the anonymous donor, the win-

ADMINISTRATIVE RULES

ning Lottery ticket or share shall be retained until the end of the prize claim period. After the end of the prize claim period, the ticket or share shall constitute an unclaimed prize as described in OAR 177-010-0085 and shall be forfeited to the public purpose.

(g) **Discharge of Lottery from Liability:** The State of Oregon, its agents, officers, employees, and representatives, including but not limited to, the Oregon Lottery, its Director, agents, officers, employees, and representatives, are discharged of all liability upon payment of an anonymously donated prize in accordance with this rule and any applicable game rules to the extent that they do not conflict with this rule. The Lottery is not responsible in any way for the fulfillment or completion of the agreement between the intended recipient and the agent. The Lottery's decisions regarding the determination that a Lottery ticket or share donated anonymously is, or is not, a winning ticket or share or any question or dispute arising from the payment of such a prize is final and binding on all parties. In the event a question or issue arises regarding payment of a prize donated anonymously, the Director may withhold payment until the question or issue is resolved. The Lottery, the intended recipient or custodian, if the intended recipient is a minor, or the designated agent if the intended recipient is a non-profit group, may petition a court of competent jurisdiction for judicial resolution of the matter.

(8) **Social Security Numbers:** Each United States resident who is to receive a payment of winnings greater than \$600 shall furnish to the Lottery the information required on the Internal Revenue Service Form W-2G (or any other form required by the IRS,) including but not limited to the winner's name, address, and social security number. This disclosure is mandatory and the authority for such disclosure is 42 USC 405(c)(2)(C), 26 CFR 31.3402(q)-1(e), and ORS 461.715(1)(a). A winner's social security number will be used for the purpose of identifying child support obligors and submitting required documents to state and federal tax authorities.

(9) **Payment Decisions:** The Director shall make the final decision on whether any prize is paid or any annual prize payment is made. All prizes shall be paid within a reasonable time after they are validated, unless the Director delays a prize payment. The Director may, at any time, delay any prize payment in order to review the validity of a prize claim, or review a change of circumstances relative to the prize awarded, the payee, or the claim, or review any other relevant matter that may come to the Director's attention. For any prize requiring annual payments, all payments after the first payment shall be made on the anniversary date of the first payment in accordance with the type of prize awarded. Any delayed annual payment will be brought up to date immediately when payment is authorized by the Director.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 4-2007(Temp), f. 11-8-07, cert. ef. 11-12-07 thru 5-9-08; LOTT 1-2008, f. 3-21-08, cert. ef. 3-31-08

177-046-0170

Governing Law

(1) **General:** All players or persons purchasing or possessing any Lottery ticket or share must comply with and are bound by all applicable laws, rules, and procedures and any additional terms and conditions found on the ticket or share itself. In the event of a conflict between the additional terms and conditions found on a Lottery ticket or share with the Lottery's rules, the rules control.

(2) **Lottery Materials:** All materials distributed by the Lottery for playing Lottery games must be used solely for playing the game described by these rules. Any use or reproduction of the materials for purposes other than those permitted by these rules may constitute a violation of the gambling laws of the State of Oregon.

(3) **Director's Decisions:** All decisions of the Director regarding Lottery games are final.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.020, 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Hist.: LOTT 12-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 23-2002, f. & cert. ef. 11-25-02; LOTT 4-2007(Temp), f. 11-8-07, cert. ef. 11-12-07 thru 5-9-08; LOTT 1-2008, f. 3-21-08, cert. ef. 3-31-08

177-050-0002

Definitions

For the purposes of Division 50, the following definitions apply except as otherwise specifically provided in OAR chapter 177 or unless the context requires otherwise:

(1) **"Pack"** means a book of shrink-wrapped Scratch-itSM game tickets which may or may not be attached to each other by perforations.

(2) **"Pack-Ticket Number"** means the uncovered number printed on a Scratch-itSM ticket which consists of a game number, a unique pack identification number, and a ticket number.

(3) **"Play Symbols"** mean the figures printed under each of the rub-off spots on the playing surface of a Scratch-itSM ticket.

(4) **"Play Symbol Caption"** means the material printed below each play symbol on a Scratch-itSM ticket which repeats or explains the play symbol. Only one play symbol caption is printed under each play symbol.

(5) **"Retailer Validation Code"** means the small letters found under the removable rub-off latex that covers the play symbols on the playing surface of a Scratch-itSM ticket. The letters appear in varying locations beneath the removable rub-off latex and among the play symbols.

(6) **"Scratch-itSM"** means a game in which winning tickets are produced at the time of manufacture with the aid of equipment, and the winning tickets are identified after purchase by scanning the bar code or manually entering the bar code number printed on each ticket with equipment provided by the Lottery. A Scratch-itSM game ticket offers a player the opportunity to remove a latex covering on the playing surface of a ticket and play the Scratch-itSM ticket for entertainment purposes.

(7) **"Ticket Validation Number"** means the unique number covered by latex on the playing surface of a Scratch-itSM ticket.

(8) **"Void if Removed Number"** (VIRN) means the series of digits on a Scratch-itSM ticket covered with latex which is used in the validation process.

Stat. Auth.: ORS 461 & OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.010
Hist.: LC 7-1987, f. & ef. 4-29-87; LC 13-1987(Temp), f. & ef. 7-27-87; LC 15-1987, f. 8-24-87, ef. 9-1-87; LC 4-1988, f. & cert. ef. 1-26-88; LC 6-1993, f. & cert. ef. 7-2-93; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02; LOTT 4-2007(Temp), f. 11-8-07, cert. ef. 11-12-07 thru 5-9-08; LOTT 1-2008, f. 3-21-08, cert. ef. 3-31-08

177-050-0020

Scratch-itSM Ticket Price

The price of a Scratch-itSM ticket shall be at least \$1, except to the extent of any discounts authorized by the Commission.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.240
Hist.: SLC 4-1985(Temp), f. & ef. 1-29-85; SLC 8-1985, f. & ef. 6-21-85; LC 7-1987, f. & ef. 4-29-87; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. ef. 7-2-93; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02; LOTT 4-2007(Temp), f. 11-8-07, cert. ef. 11-12-07 thru 5-9-08; LOTT 1-2008, f. 3-21-08, cert. ef. 3-31-08

177-050-0024

Method of Determining Winners

(1) **General:** Winning tickets in a Scratch-itSM game are determined at the time of manufacture when winning tickets are produced at random with the aid of equipment in accordance with the payout percentage and prize structure established for the game.

(2) **Determination of a Winning Ticket:** To determine a winning ticket, the official bar code or bar code number printed on the ticket must be scanned or manually entered either at the Lottery's Headquarters in Salem or at a retail site by a Lottery retailer into equipment connected to the Lottery's central computer system. If the ticket is a winner, Lottery's computer system will identify it as such based upon the official bar code or bar code number. Removing the latex covering on the playing surface of the ticket does not identify a winning ticket. The latex covering feature is offered for entertainment purposes only. The ticket holder must notify the Lottery or a retailer of the apparent winning ticket and submit it for validation as specified in these rules in order to claim a prize. The ticket must be validated in accordance with Lottery's administrative rules as may be amended from time to time before a prize may be paid.

(3) **Highest Prize:** Only the highest prize amount will be paid on a given Scratch-itSM ticket, except for games which are designed to offer multiple prizes. In all events, the determination of prize winners is subject to the general ticket validation requirements set forth in OAR 177-050-0027 and any additional requirements set forth on each Scratch-itSM ticket. If the terms on a ticket conflict with the Lottery's administrative rules, then the rules are the controlling authority.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.230
Hist.: LC 7-1987, f. & ef. 4-29-87; LC 4-1990, f. & cert. ef. 4-3-90; LC 8-1990(Temp), f. & cert. ef. 6-26-90; LC 11-1990, f. & cert. ef. 8-21-90; LC 6-1993, f. & cert. ef. 7-1-93; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 4-2007(Temp), f. 11-8-07, cert. ef. 11-12-07 thru 5-9-08; LOTT 1-2008, f. 3-21-08, cert. ef. 3-31-08

ADMINISTRATIVE RULES

177-050-0025

Payment of Prizes

(1) **Prizes of \$600 or Less:** Scratch-itSM ticket prizes of \$600 or less shall be claimed by one of the following methods:

(a) **Retailer Prize Payment:** The player may present the Scratch-itSM ticket to a Lottery retailer. The retailer shall determine whether a ticket entitles the holder to a prize, validate the claim with the Lottery by scanning the bar code or manually entering the bar code number printed on the ticket into equipment provided by the Lottery, and, if authorized by the Lottery, pay the player the prize amount due. A retailer that is authorized to pay a prize of \$600 or less shall pay that prize in cash or by check, or any combination thereof.

(b) **Lottery Prize Payment:** The player may submit a winning ticket in person to the Oregon State Lottery, Player Services Office, 500 Airport Road SE, Salem, Oregon. A winning ticket may be submitted to the Lottery by mail. If mailed, the player must sign the ticket in the designated area on the ticket, write the player's mailing address in the place indicated on the ticket, and mail it to the Oregon State Lottery, P.O. Box 14515, Salem, Oregon 97309. Registered mail is recommended. Upon validation of a winning ticket under OAR 177-050-0027, the Lottery will pay the amount of the prize to the player, less any applicable tax withholding. Payment may be made by check or in cash, or a combination thereof. Cash prize payments are limited to \$50 per person per day. Payment may be made in person or by mail, except that the Lottery will not mail cash. If the ticket is determined to be invalid or a non-winning ticket or the claim is invalid, the claim shall be denied and the player notified.

(2) **Prizes Greater than \$600:** A player must claim a Scratch-itSM ticket prize of more than \$600 by:

(a) **Claiming in Person:** Bringing the ticket to the Oregon State Lottery, Player Services Office, 500 Airport Road SE, Salem, Oregon during Lottery business hours and presenting the ticket to the Lottery; or

(b) **Claiming by Mail:** Signing the ticket in the designated area on the ticket, writing the player's mailing address on the ticket in the place indicated on the ticket, completing a winner claim form, and mailing it together with the winning ticket to the Oregon State Lottery, P.O. Box 14515, Salem, Oregon 97309. Registered mail is recommended. The winner claim form may be obtained from any Lottery retailer offering traditional games or from the Lottery at the addresses listed above.

(c) **Lottery Prize Payment:** Upon validation of a winning ticket under OAR 177-050-0027, the Lottery will pay by check the amount of the prize to the player, less any applicable tax withholding. If the ticket is determined to be invalid or a non-winning ticket, or the claim is invalid, the claim shall be denied and the player notified.

(3) **Validation and Payment of Lost, Damaged, or Destroyed Tickets for Prizes Greater than \$600:** If a player of a Scratch-itSM prize of more than \$600 cannot submit an intact winning ticket because a Scratch-itSM game retailer lost, damaged, or destroyed the ticket while attempting to perform validation procedures on the game ticket, a prize claim based on the lost, damaged, or destroyed ticket may still be validated provided the claim is made before the end of the one year claim period after the end of the game as described in OAR 177-046-0150(1).

(a) **Player Form and Affidavit:** To claim a prize based on a lost, damaged, or destroyed ticket, the player must obtain, complete, and sign a winner claim form and a claim affidavit furnished by the Lottery. The player shall submit the two completed forms along with any other evidence of the validation attempt that is in the player's possession (including, but not limited to, the "This is not a Ticket" slip produced by the terminal at the time of the validation attempt) to the Lottery at the addresses listed in section (1)(b) of this rule, either by mail (registered mail recommended) or in person at the Lottery's Headquarters in Salem during Lottery business hours.

(b) **Evidence:** The evidence submitted by the player must corroborate the validation attempt including, but not limited to, identification of the Lottery game retailer or clerk who attempted to validate the prize, the time and date of the validation attempt, the ticket validation number, the terminal number, and the prize amount.

(c) **Investigation:** The Assistant Director for Security will conduct an investigation to determine if the claim and winning game ticket are valid.

(d) **Retailer Affidavit:** A retailer who is the subject of an investigation conducted under this section must complete and provide to the Lottery a retailer affidavit form explaining the events in question.

(e) **Director's Determination:** Based upon all the facts and information available, the Director shall make a determination whether prize payment is warranted and authorized.

(f) **Payment of Prize:** Upon the Director's determination that the ticket submitted under this section is a valid, winning ticket, and that the player is the proper person to whom a prize is payable, the Lottery shall present or mail a check to the player in payment of the appropriate prize amount less any applicable tax withholding.

(g) **Restriction of Payment:** Payments of claims submitted under this section are restricted to the prize amount.

(h) **Retailer Sanctions:** The Director may sanction a Lottery game retailer for the loss, damage, or destruction of a winning Scratch-itSM game ticket including, but not limited to, imposing a requirement for training for the retailer or the retailer's employees, and any other actions that the Lottery may take in response to a retailer's failure to perform contract duties or requirements as described in the Lottery retailer contract.

(i) **Notification of Denial:** If the ticket is determined to be invalid or a non-winning ticket, or the claim is invalid, the claim shall be denied and the player notified.

(4) **Time Limit:** A prize claim must be made under this rule within the time limit specified in OAR 177-046-0150(1).

(5) **Invalid Tickets:** Any ticket not passing all applicable validation checks is invalid and void for claims made under OAR 177-050-0025(3). A player submitting an invalid or void ticket is ineligible for any prize and no prize shall be paid for such a ticket.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.250

Hist.: SLC 4-1985(Temp), f. & ef. 1-29-85; SLC 8-1985, f. & ef. 6-21-85; SLC 4-1986, f. & ef. 2-25-86; SLC 27-1986, f. & ef. 11-24-86; LC 7-1987, f. & ef. 4-29-87; LC 4-1990, f. & cert. ef. 4-3-90; LC 8-1993, f. 9-22-93, cert. ef. 10-18-93; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 4-2007(Temp), f. 11-8-07, cert. ef. 11-12-07 thru 5-9-08; LOTT 1-2008, f. 3-21-08, cert. ef. 3-31-08

177-050-0027

Ticket Validation Requirements

(1) **General:** Besides meeting all of the other requirements in OAR Chapter 177 and as may be printed on each ticket, the following validation requirements apply to Scratch-itSM game tickets.

(2) **Requirements:** Except as provided in section (3) of this rule and OAR 177-050-0025(3), to be a valid Scratch-itSM game ticket, all of the following requirements must be met:

(a) **Play Symbols:** Where applicable, each of the play symbols must have a play symbol caption underneath, and each play symbol must agree with its play symbol caption.

(b) **Legibility:** Where applicable, each of the play symbols and play symbol captions must be present in its entirety and be legible.

(c) **Specifications:** Each of the play symbols and its play symbol caption must be printed according to game specifications.

(d) **Completeness of Information:** The game number, pack number, ticket number, bar code, bar code number, and VIRN number must be present and all information must correspond with the Lottery's computer records.

(e) **Printing Order:** The play symbols, play symbol captions, game number, pack-ticket number, and VIRN number must be right-side-up and not reversed in any manner.

(f) **Pack-Ticket Number:** The ticket must have exactly one pack-ticket number.

(g) **VIRN:** The VIRN number of an apparent high-tier winning ticket must appear on the Lottery's official record of winning ticket VIRN numbers, and a ticket with that VIRN number must not have been paid previously.

(h) **Artwork:** Each of the following must correspond to the artwork on file at the Lottery: Play symbols on the ticket, play symbol captions, pack-ticket numbers, display printing, game numbers, retailer validation code, and ticket VIRN number.

(i) **Multi-Page Tickets:** In the case of Scratch-itSM tickets consisting of multiple pages designed to remain intact, the individual pages must not be detached from each other. Such separated multi-page tickets will be considered damaged tickets.

(3) **Lost, Damaged, or Destroyed Tickets for Prizes Greater than \$600:** If a player of a Scratch-itSM prize of more than \$600 cannot submit an intact winning ticket because a Scratch-itSM game retailer lost, damaged, or destroyed the ticket while attempting to perform validation procedures on the game ticket, a prize claim based on the lost, damaged, or destroyed ticket may still be validated as set forth in OAR 177-050-0025(3), provided the claim is made before the end of the one year claim period after the end of the game as described in OAR 177-046-0150(1).

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(a) Payment Process: When a prize payment is authorized by the Director under this section, the prize payment shall be validated as set forth in OAR 177-050-0025(3).

(b) Payment Restriction: Payments of prize claims submitted under this section are restricted to the prize amount.

(4) Damaged Tickets: Notwithstanding OAR 177-046-0090 and section (2) of this rule, the Director may pay the prize on a winning Scratch-itSM ticket that is inadvertently or accidentally damaged so that it cannot be validated either through the Lottery's central computer system or because it is missing information required under section (2) of this rule, if the ticket is readable and is validated as a winning ticket by the Lottery's Security Section. For purposes of this rule, a Scratch-itSM ticket is unreadable if there is insufficient information remaining on the ticket for the Lottery's Security Section to reconstruct and validate the ticket.

(a) Validation Process: When a prize payment is authorized by the Director under this section, the prize payment shall be validated as follows:

(A) Evidence: The player shall obtain, complete, and sign a winner claim form and a claim affidavit furnished by the Lottery. The player shall submit the two completed forms along with the damaged ticket, (including, but not limited to, all pages of a game book in the player's possession) to the Lottery at the addresses listed in section OAR 177-050-0025(1)(b), either by mail (registered mail is recommended) or in person at the Lottery's Headquarters in Salem during Lottery business hours.

(B) Investigation: The Assistant Director for Security will conduct an investigation to determine if the claim and winning game ticket are valid.

(C) Director's Determination: Based upon all the facts and information available, the Director shall make a determination whether prize payment is warranted and authorized. The Director may require that such determination be made on the last day of the one year claim period following the end of the game, as described in OAR 177-046-0150(1). If the prize claim period expires on a weekend or on a holiday when the Lottery is closed, the claim period will be extended to end at the close of the next Lottery business day. Following validation, the Lottery shall issue the prize payment in the usual course of Lottery business.

(D) Payment of Prize: Upon the Director's determination that the ticket submitted under this section is a valid, winning ticket, and that the player is the proper person to whom a prize is payable, the Lottery shall present or mail a check to the player in payment of the appropriate prize amount less any applicable tax withholding.

(E) Notification of Denial: If the ticket is determined to be invalid or a non-winning ticket or the claim is invalid, the claim shall be denied and the player notified.

(b) Payment Restriction: Payment of a prize claim submitted under this section is restricted to the prize amount less any applicable tax withholding.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.250

Hist.: LC 7-1987, f. & ef. 4-29-87; LC 4-1988, f. & cert. ef. 1-26-88; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. ef. 7-2-93; LC 7-1995, f. & cert. ef. 7-7-95; LC 6-1996, f. 5-30-96, cert. ef. 6-1-96; LC 1-1997, f. 1-31-97, cert. ef. 2-1-97; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02; LOTT 13-2004(Temp), f. & cert. ef. 11-29-04 thru 5-27-05; LOTT 3-2005, f. 4-27-05, cert. ef. 4-28-05; LOTT 10-2005(Temp), f. & cert. ef. 11-2-05 thru 4-28-06; LOTT 18-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 4-2007(Temp), f. 11-8-07, cert. ef. 11-12-07 thru 5-9-08; LOTT 1-2008, f. 3-21-08, cert. ef. 3-31-08

177-050-0037

Stolen, Destroyed, and Damaged Scratch-ItSM Tickets

(1) Defective, Damaged, or Destroyed Tickets: A Lottery retailer will not be billed for non-activated Scratch-itSM tickets that are defective, damaged, or destroyed, or the Lottery may credit a retailer's EFT account for activated Scratch-itSM tickets that are defective, damaged, or destroyed, under the following conditions:

(a) Manufacturing Defect: The defect is a result of a manufacturing error or damage during shipment; or

(b) Reasonable Control: The damage or destruction is due to circumstances beyond the retailer's reasonable control, such as a structure fire, flood, or other natural disaster; and

(c) Time Limitation: Damaged or defective Scratch-itSM tickets are returned to the Lottery within 30 days of discovering the damage or defect. When the Scratch-itSM tickets cannot be returned because they are completely destroyed or damaged beyond recognition, within 30 days of when the tickets were destroyed or damaged the retailer must submit, on a form provided by the Lottery, a signed and notarized affidavit which describes the circumstances of how the Scratch-itSM tickets were destroyed or damaged. The Lottery's Finance and Accounting department will review inventory and sales records and confirm the value of the destroyed or damaged Scratch-itSM tickets.

(d) Director's Approval: Credit for defective, damaged, or destroyed Scratch-itSM tickets may be given only upon approval of the Director.

(2) Theft of Activated Tickets: The Lottery may credit a retailer's EFT account for one-half of the uninsured loss of activated Scratch-itSM tickets that are stolen from the retailer's premises subject to the following:

(a) Loss Amount: The theft results in a loss of \$200 or more of activated Scratch-itSM tickets.

(b) Security Measures: The retailer has in place and was using at the time of the theft, reasonable security measures to prevent the theft of Scratch-itSM tickets. The Director will, in the Director's sole discretion, determine if a retailer was using reasonable security measures at the time of the theft. For purposes of this rule, "reasonable security measures" means that at a minimum, the retailer:

(A) Approved Dispensers: Keeps Lottery Scratch-itSM tickets in Lottery approved dispensers, ITVMs, or stored in a locked container inaccessible to customers and unauthorized employees if the tickets are not yet being offered for sale;

(B) Inventory Control Process: Has an inventory control process in place, including adequate record keeping, Scratch-itSM ticket access controls, and ticket activation controls; and

(C) Accounting Procedures: Uses accounting or bookkeeping procedures that alert the retailer to the theft of activated Scratch-itSM tickets within seven business days of the theft.

(c) Reporting Requirements: The retailer must:

(A) Report the theft to a local law enforcement agency and to the Lottery within 48 hours of discovering the theft. The report must include the game, pack, and Scratch-itSM ticket numbers of the stolen tickets; and

(B) Submit to the Lottery a copy of a police report showing the theft was reported to the local law enforcement agency.

(d) Retailer Affidavit: The retailer must submit to the Lottery, on an affidavit form provided by the Lottery, a signed and notarized statement:

(A) Describing the circumstances of the theft, the game, pack, and Scratch-ItSM ticket numbers of the stolen tickets, the total loss claimed, and a statement whether the retailer is self-insured or is covered by third-party insurance; and

(B) The retailer must attach to the statement a copy of any documents substantiating the theft or loss, including, but not limited to, any inventory control records related to the stolen tickets and any financial records showing the monetary loss.

(e) Third Party Insurance: If the loss is fully covered by third-party insurance, the retailer is not eligible to receive a credit for the stolen tickets. If the loss is not entirely covered by third-party insurance, then the retailer may receive a credit for one-half of the balance of the loss if the retailer provides a letter from the insurance company setting forth the amount of loss claimed by the retailer and the amount paid to the retailer by the insurance company. The retailer must provide any other information needed by the Lottery to determine the amount of insurance coverage and the amount paid to the retailer for the loss.

(f) Cooperation: The retailer must fully cooperate with the Lottery and provide any documents or information requested. The retailer must cooperate fully in the prosecution of any criminal case resulting from the theft of the tickets or in any civil lawsuit for recovery of the amount of the loss paid to the retailer by the Lottery under this rule.

(g) Restitution from Criminal Prosecution of Judgment in Civil Action: The Director will not credit the retailer's EFT account for any amount of the loss that a court orders repaid as restitution or that is awarded to the retailer in a civil judgment or settlement. The Director may delay crediting the retailer for the loss claimed until criminal proceedings related to the theft of the tickets are concluded. The Lottery may recover from the retailer any amount ordered as restitution in a criminal case or received by the retailer pursuant to a civil judgment or settlement agreement.

(h) Employee Theft: In no event will the Director authorize credit to a retailer when the retailer is the victim of employee theft.

(i) Time Limitation: Notwithstanding the 48-hour reporting requirement of subsection (c) of this section, the Director may authorize a credit upon a showing that the failure to timely report was beyond the retailer's reasonable control. In no event will a retailer receive a credit for a theft that occurred more than 30 days prior to the date that the retailer reported the theft to the Lottery and the local law enforcement agency as set forth in subsection (b) of this section.

(j) Limit on Credit Amount: In no event may a retailer receive credit for a loss resulting from theft in an amount greater than \$2500 during the term of the retailer contract.

(3) Theft of Non-Activated Tickets: The Lottery will not bill a retailer for Scratch-itSM tickets received but not activated that are stolen from

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the retailer's premise if the theft results in the loss of \$200 or more of non-active Scratch-itSM tickets and the retailer complies with the requirements of subsections (2)(b) through (2)(h) of this rule. The limitations set forth in subsections (2)(g) through (2)(j) of this rule apply to the theft of non-activated Scratch-itSM tickets.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.210
Hist.: LC 2-1991, f. & cert. ef. 7-24-91; LC 6-1993, f. & cert. ef. 7-2-93; LC 4-1995, f. 4-27-95, cert. ef. 5-1-95; LC 13-1996, f. & cert. ef. 12-27-96; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02; LOTT 19-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 4-2007(Temp), f. 11-8-07, cert. ef. 11-12-07 thru 5-9-08; LOTT 1-2008, f. 3-21-08, cert. ef. 3-31-08

177-050-0070

Confidentiality of Scratch-ItSM Tickets

Except when playing a ticket that the retailer or its employees or agents have purchased as a consumer, no retailer or its employees or agents shall attempt to ascertain the numbers or symbols appearing in the designated areas under the removable latex coverings or otherwise attempt to identify winning Scratch-itSM tickets.

Stat. Auth.: ORS 461
Stats. Implemented: ORS 461.210
Hist.: SLC 4-1985(Temp), f. & ef. 1-29-85; SLC 8-1985, f. & ef. 6-21-85; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 4-2007(Temp), f. 11-8-07, cert. ef. 11-12-07 thru 5-9-08; LOTT 1-2008, f. 3-21-08, cert. ef. 3-31-08

Oregon State Marine Board Chapter 250

Rule Caption: Establish a Statewide Boating Safety/Education Assistance Program for non-profit organizations and associations.

Adm. Order No.: OSMB 2-2008

Filed with Sec. of State: 4-11-2008

Certified to be Effective: 5-1-08

Notice Publication Date: 2-1-2008

Rules Adopted: 250-010-0075

Rules Repealed: 250-010-0075(T)

Subject: This rule will implement a statewide boating safety/education assistance program. The program will provide small amounts of funding to local community organizations to address safety problems on their local waterways. The funds would be used for creative and innovative local projects that promote safe boating. Volunteer boating groups (such as the US Coast Guard Auxiliary or US Power Squadrons), non-profit clubs and associations are among the groups that would be eligible to apply for funding. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: June LeTarte—(503) 378-2617

250-010-0075

Boating Safety/Education Assistance Program

(1) The Board is authorized by ORS 830.110 (1), (4), (7), and (8) to carry out the provisions of boating safety education. The Boating Safety/Education Assistance Program provides funds for new, unique or innovative ideas or programs to promote safe boating and increase youth involvement in recreational boating.

(2) The Board may adopt policies, guidelines and procedure manuals to implement these rules. Assistance funds will be provided only to participants who meet eligibility guidelines. The Program process is competitive in nature. Applications are reviewed and evaluated on the basis of applicant's eligibility, project feasibility, merit and effectiveness and the proposal's compatibility with goals, needs and priorities of the Board.

(3) Applications will be accepted from nonprofit corporations or organizations. The application will be submitted to the Agency as described in the "Let's Go Boating" Assistance Program Manual.

(A) Following Marine Board staff consideration, the applicant will be advised in writing of the Marine Board Director's or designee's decision. If the application is denied, Marine Board staff will provide specific notice indicating the reasons.

(B) Upon application approval, Marine Board staff will award a written contract stipulating project specifications and expectations. The recipient must sign and return the contract to the Agency within forty-five (45) days or award may be rescinded.

(4) An annual allotment of funds is available each biennial period as prescribed by the Board Proposals requesting more than the amounts prescribed may be considered on a case-by-case basis based on available funds.

(A) Only items approved by the Marine Board Director or designee and identified in the scope of work from the recipient's finalized contract's itemized cost estimates or amendments are eligible for funding. Eligible project costs are those identified specifically with and charged directly to a particular scope item.

(B) In determining approval, Marine Board staff will give priority to those applicants providing their program or services free to the general public.

(C) Applications for funding are accepted, reviewed and considered on an annual basis set by the Board. Applicants should contact the Agency for program application deadlines and availability of funds.

(D) The Board requires projects or programs to be completed within the timeframe set by the Board. Under extraordinary circumstances, the Marine Board Director or designee may authorize project extensions up to ninety (90) days.

(5) Each approved project must clearly acknowledge the use of Marine Board funds. This will be done as appropriate in print or by sign.

Stat. Auth.: ORS 830.110
Stats. Implemented:
Hist.: OSMB 14-2007(Temp), f. & cert. ef. 12-10-07 thru 5-31-08; OSMB 2-2008, f. 4-11-08, cert. ef. 5-1-08

Rule Caption: Amend speed restrictions on Diamond Lake.

Adm. Order No.: OSMB 3-2008

Filed with Sec. of State: 4-11-2008

Certified to be Effective: 4-26-08

Notice Publication Date: 3-1-2008

Rules Amended: 250-020-0102

Subject: This rule changes the speed restrictions on Diamond Lake. This rule amendment is in response to legislative direction to the Marine Board to reduce speed restrictions once the health of Diamond Lake was restored.

Rules Coordinator: June LeTarte—(503) 378-2617

250-020-0102

Boat Operations in Douglas County

(1) No person shall operate a motorboat at a speed in excess of 10 MPH in the following areas:

- (a) On Carter Lake;
- (b) On Plat I Reservoir;
- (c) Diamond Lake.

(2) No person shall operate a motorboat at a speed in excess of 5 MPH in the following areas:

- (a) Within the Harbor limits of Salmon Harbor on Winchester Bay;
- (b) On the Umpqua River in the vicinity of River Forks Park from a point 30 yards downstream (North) from the launching ramp to a point upstream 100 yards on each the North Fork and South Fork of the Umpqua River;

(c) On the Umpqua River within 300 feet of the boat launching ramp and designated swimming area at Scottsburg Park.

(3) Lemolo Lake:

(a) No person shall operate a motorboat in excess of a "Slow-No Wake" maximum 5 MPH speed within 150 feet of the shore or pier line in a zone extending from the launch ramp at Lemolo Lake Resort south to Pool Creek Inlet, and from a point 200 feet south of Pool Creek Inlet south to the small unnamed island, and thence south from the south tip of the island across to the nearest peninsula;

(b) Boats shall not exceed a "Slow-No Wake" maximum 5 MPH speed in the area from where U.S. Forest Service Road Number 2666 crosses the North Umpqua River, to a point 2,000 feet westward thereof;

(c) Boats shall not exceed a maximum speed of 40 MPH on all other waters of Lemolo Lake.

(4) No person shall operate a motorboat for any purpose on the following bodies of water:

- (a) Amos and Andy Lakes;
- (b) June Lake;
- (c) Indigo Lake;
- (d) Maidu Lake;
- (e) Wolf Lake;
- (f) Skookum Lake;
- (g) Fish Lake;
- (h) Buckeye Lake;
- (i) Cliff Lake;
- (j) Calamut Lake;
- (k) Lucile Lake;

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Oregon Student Assistance Commission, Office of Degree Authorization Chapter 583

- (l) Faller Lake;
- (m) Lower Twin Lake;
- (n) Upper Twin Lake;
- (o) Lake in the Woods.
- (5) Cooper Creek Reservoir: No person shall operate a motorboat in excess of:
 - (a) 40 MPH on the main body of the Reservoir;
 - (b) 5 MPH within the buoyed area of Rachele Inlet; Pierce Canyon Inlet; Sutherlin Inlet and Douglas Inlet;
 - (c) 5 MPH within 200 feet of a boat launching ramp or designates swimming area.
- (6) Ben Irving Reservoir: No person shall operate a motorboat in excess of:
 - (a) 35 MPH from the markers (identified by the letter "A") located where the reservoir narrows, downstream for approximately 1.2 miles to the dam;
 - (b) 5 MPH:
 - (A) From the markers (identified by the letter "A") located where the reservoir narrows, upstream for approximately one mile to the second set of markers (identified by the letter "B");
 - (B) Within 100 feet of the boat ramp as marked.
 - (c) No person shall operate a motorboat upstream from the second markers (identified by the letter "B") except that electric motors may be used;
 - (d) No boats shall be permitted within the log boomed area in the vicinity of the dam spillway.
- (7) Galesville Reservoir: No person shall operate a motorboat in excess of:
 - (a) 40 MPH on the main body of the lake;
 - (b) 5 MPH along the north shore between the launch ramp and log boom, in the buoyed areas;
 - (c) 5 MPH between the buoy line at the upper end of the lake to the powerboat deadline as marked;
 - (d) Above the 5 MPH zone, as marked, no person shall operate a motorboat, except those propelled by electric motors;
 - (e) Persons operating a motorboat in excess of 5 MPH in the otherwise unrestricted portions of the lake shall proceed about the lake in a counter clockwise direction.
- (8) No person shall operate a motorboat on the North Umpqua River between the boat ramp at Lone Rock Camp (approximate RM 32) upstream to Lemolo Lake.
- (9) Loon Lake:
 - (a) Except for safe take-offs and landings, no person shall operate a motorboat in excess of a 5 MPH "Slow-No Wake" speed within 200 feet of the designated swimming area and boat mooring area at the BLM day use area, as marked. Boats towing skiers may exceed 5 MPH to extent necessary to maintain the skier in a skiing position, within 200 feet from the designated swimming area and boat mooring area only under safe conditions as outlined in this section. A safe take-off or landing will not be considered "safe" unless it can be accomplished without risk to any swimmer or craft within 200 feet from designated swimming area and boat mooring area. If a safe landing as thus defined is not possible, skiers must be picked up by the boat before coming within 200 feet from the designated swimming area and boat mooring area and brought to shore under usual speed restrictions (5 MPH with in 200 feet of the designated swimming area and boat mooring area). Take-offs and landings are required to be made following the mandatory counter-clockwise pattern.
 - (b) Persons operating a motorboat in excess of 10 MPH shall proceed in a counter-clockwise direction in the otherwise unrestricted portions of the lake.
 - (c) No person shall operate a motorboat in excess of a 5 MPH "Slow-No Wake" speed within the buoyed area extending from the north shore of the cove at Fish Haven Resort in a southwest direction across the lake to the end of the prominent point of land on the south shore of the lake, as marked.
- (10) Hemlock Lake: No person shall operate a motorboat, except those propelled by electric motors.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110, 830.175 & 830.185

Hist.: MB 20, f. 3-20-63; MB 29, f. 6-17-66; MB 32, f. 9-14-66; MB 34, f. & ef. 6-2-67; MB 41, f. 9-18-68; MB 47, f. 7-14-70, ef. 8-11-70; MB 74(Temp), f. 5-18-76, ef. 6-1-76 thru 9-28-76; MB 82, f. & ef. 4-19-77; Renumbered from 250-020-0083; MB 4-1981(Temp), f. & ef. 4-17-81; MB 7-1981, f. & ef. 11-16-81; MB 4-1987, f. 4-20-87, ef. 5-1-87; MB 21-1987, f. 12-31-87, ef. 1-1-88; MB 5-1995, f. & cert. ef. 7-14-95; OSMB 8-2000, f. & cert. ef. 12-1-00; OSMB 7-2002, f. & cert. ef. 10-15-02; OSMB 1-2006, f. & cert. ef. 3-28-06; OSMB 7-2006(Temp), f. 8-15-06, cert. ef. 9-5-06 thru 9-30-06; Administrative correction 10-16-06; OSMB 7-2007, f. & cert. ef. 7-2-07; OSMB 3-2008, f. 4-11-08, cert. ef. 4-26-08

Rule Caption: Oversight of postsecondary accrediting bodies.

Adm. Order No.: ODA 2-2008

Filed with Sec. of State: 4-14-2008

Certified to be Effective: 4-14-08

Notice Publication Date: 3-1-2008

Rules Adopted: 583-070-0002, 583-070-0011, 583-070-0015, 583-070-0020

Subject: This proposed rule implements the portion of SB 198 (2007) that requires the Office of Degree Authorization to regulate certain entities that claim to be postsecondary accreditors, if those entities operate in Oregon. The language defines and classifies accreditors and establishes a process through which the state will oversee their operations.

Rules Coordinator: Susanne D. Ney—(541) 687-7394

583-070-0002

Purpose and Scope

This rule implements SB 198 (2007) in establishing standards and procedures for the evaluation and approval of postsecondary accrediting bodies seeking to operate in or from Oregon.

Stat. Auth.: SB 198 (2007)

Stats. Implemented:

Hist.: ODA 2-2008, f. & cert. ef. 4-14-08

583-070-0011

Definitions of Terms

(1) "Office" means Office of Degree Authorization, as represented by the administrator or designated agent.

(2) "Accreditor" means an entity that purports to accredit postsecondary institutions or programs.

(3) "Federally recognized accreditor" means a U.S. accreditor formally recognized by the U.S. Department of Education.

(4) "Council for Higher Education Accreditation" (CHEA) means an institutional membership organization that coordinates institutional and programmatic accreditation and recognizes the quality of accrediting organizations in the United States, or its functional successor.

(5) "Commission" means the Oregon Student Assistance Commission.

(6) "Academic standards" are those standards related to faculty qualifications, admissions, acceptance of transfer credits, quantity of student work and program length and quality established in OAR 583-030-0035.

(7) "Operate in Oregon" means to use an Oregon address, telephone number, fax number or other contact point or mechanism located in Oregon on any document available to the public, do business in Oregon related to the accreditation of post-secondary institutions, or to accredit schools located in or operating from Oregon.

Stat. Auth.: SB 198 (2007)

Stats. Implemented:

Hist.: ODA 2-2008, f. & cert. ef. 4-14-08

583-070-0015

Authorization of Accreditors

(1) All federally recognized accreditors are authorized to operate in or from Oregon without Commission oversight.

(2) All accreditors that are not federally recognized but are recognized by CHEA are authorized to operate in or from Oregon with Commission oversight.

(a) The oversight requirement for a CHEA-recognized accreditor already operating in Oregon on the effective date of these rules goes into effect when an Oregon school or program accredited by that accreditor begins the process of renewing such accreditation.

(b) A CHEA recognized accreditor having no office or contact points in Oregon as defined in 583-0011(7) above, and which accredits programs at institutions that have separate institutional accreditation by a federally recognized accreditor, does not require Commission approval to accredit programs located at Oregon schools.

(3) Any other accreditor lacking federal recognition, except for religious accreditors exempt under ORS 348.603, requires approval from the Commission to operate in or from Oregon.

(4) No other accreditor except for accreditors of religious schools meeting the requirements of ORS 348.603(4) may operate in or from Oregon without approval in advance from the Commission.

ADMINISTRATIVE RULES

Stat. Auth.: SB 198 (2007)
Stats. Implemented:
Hist.: ODA 2-2008, f. & cert. ef. 4-14-08

583-070-0020

Approval Process for Accreditors

(1) Any accreditor applying for approval will be approved by the Commission if the Commission finds that the accreditor has adequate academic standards comparable to ODA standards. Standards used by an accreditor need not be identical to state standards but must be adequate to ensure academic quality at a level comparable to that required by the state.

(2) Any accreditor seeking Commission approval must submit to ODA a request for approval accompanied by the following:

(a) A copy of the accreditor's academic standards,

(b) A description of how it evaluates institutional effectiveness, demonstrating a commitment to rational standards,

(c) Its standards for faculty and administrative qualifications, showing that it requires accredited or demonstrably equivalent degrees, and information on how such standards are enforced,

(d) Its standards for adequate institutional finances, demonstrating that it ensures appropriate management of funds and disallows charging students on any basis other than a per-term basis, and

(e) Names and professional qualifications of all persons employed by the accreditor and any persons serving on its board of directors, demonstrating that such people have backgrounds and qualifications comparable to those serving in similar roles at a federally-recognized accreditor,

(f) Names and professional qualifications of all people who have served on evaluation teams in the previous year and those who are scheduled to serve in the next year, if known, in order to show that only people with appropriate accredited degrees and professional qualifications are chosen for such teams.

(3) ODA must evaluate the accreditor and make a recommendation to the Commission within 60 days of receiving the application.

(a) If ODA objects to approval of an accreditor on grounds that the accreditor has inadequate academic standards, the ODA Administrator shall bring to the Commission a written report setting forth the reasons for the objection. The Commission shall afford the affected accreditor a hearing within 60 days of the ODA objection. At the hearing, the ODA Administrator and the accreditor will be provided an opportunity to testify and submit any material in support of their views.

(b) The Commission shall determine whether an accreditor is permitted to operate in Oregon only after the accreditor has had, if necessary, an opportunity to exercise its rights under sections 1 and 2 above.

Stat. Auth.: SB 198 (2007)
Stats. Implemented:
Hist.: ODA 2-2008, f. & cert. ef. 4-14-08

Oregon University System Chapter 580

Rule Caption: Modification of 2007-08 Academic Year Fee book to include tuition remission for veteran dependents.

Adm. Order No.: OSSHE 6-2008(Temp)

Filed with Sec. of State: 3-20-2008

Certified to be Effective: 3-20-08 thru 9-1-08

Notice Publication Date:

Rules Amended: 580-040-0040

Subject: Amendment to OAR 580-040-0040 to update provisions of the 2007-08 Academic year Fee Book. Updates to OAR 580-040-0040 include specifying that dependents of veterans of the military armed forces are eligible for a tuition remission at public higher institutions. Starting spring term of 2008, this remission applies if the student is a child (includes adopted or stepchildren), a spouse, or unremarried surviving spouse of a member of the United States Armed forces who, after September 11, 2001, either died on active duty, became 100% disabled, or died as a result of a disability connected with military service as certified by the United States Department of Veterans Affairs.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-040-0040

Academic Year Fee Book

The document entitled "Academic Year Fee Book" dated March 20, 2008, is hereby amended by reference as a temporary rule. All prior adop-

tions of academic year fee documents are hereby repealed except as to rights and obligations previously acquired or incurred there under.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 4-1978, f. & ef. 6-15-78; HEB 5-1979, f. & ef. 7-20-79; HEB 11-1979, f. & ef. 8-22-79; HEB 1-1980, f. & ef. 4-18-80; HEB 7-1980, f. & ef. 6-18-80; HEB 11-1980, f. & ef. 8-20-80; HEB 4-1981(Temp), f. 6-30-81, ef. 7-1-81; HEB 5-1981, f. & ef. 8-18-81; HEB 15-1981(Temp), f. & ef. 12-18-81; HEB 5-1982, f. & ef. 7-14-82; HEB 4-1983, f. & ef. 7-29-83; HEB 4-1984, f. & ef. 6-20-84; HEB 5-1985, f. & ef. 8-12-85; HEB 12-1986, f. & ef. 7-30-86; HEB 6-1987, f. & ef. 8-4-87; HEB 8-1988, f. & cert. ef. 8-5-88; HEB 10-1988, f. & cert. ef. 11-16-88; HEB 3-1989, f. & cert. ef. 11-27-89; HEB 6-1989, f. & cert. ef. 7-28-89; HEB 7-1990, f. & cert. ef. 6-4-90; HEB 8-1990(Temp), f. & cert. ef. 7-26-90; HEB 12-1990, f. & cert. ef. 10-3-90; HEB 5-1991, f. & cert. ef. 8-15-91; HEB 8-1992, f. & cert. ef. 7-31-92; HEB 2-1993, f. & cert. ef. 2-5-93; HEB 5-1993, f. & cert. ef. 8-11-93; HEB 7-1994, f. & cert. ef. 8-4-94; HEB 3-1995, f. & cert. ef. 8-1-95; HEB 3-1996, f. & cert. ef. 8-8-98; HEB 5-1996, f. & cert. ef. 12-18-96; HEB 3-1997, f. & cert. ef. 7-24-97; OSSHE 4-1998, f. & cert. ef. 7-22-98; OSSHE 5-1998(Temp), f. & cert. ef. 8-21-98 thru 1-31-99; OSSHE 9-1998, f. & cert. ef. 12-23-98; OSSHE 3-1999(Temp), f. & cert. ef. 7-22-99 thru 1-14-00; OSSHE 4-1999, f. & cert. ef. 9-16-99; OSSHE 3-2000, f. & cert. ef. 7-26-00; OSSHE 4-2001, f. & cert. ef. 7-27-01; OSSHE 8-2002, f. & cert. ef. 8-14-02; OSSHE 2-2003, f. & cert. ef. 8-4-03; OSSHE 6-2004, f. & cert. ef. 6-15-04; OSSHE 2-2006, f. & cert. ef. 6-8-06; OSSHE 3-2007, f. & cert. ef. 6-21-07; OSSHE 6-2008(Temp), f. & cert. ef. 3-20-08 thru 9-1-08

Oregon University System, Eastern Oregon University Chapter 579

Rule Caption: Suspending obsolete rules, as all fees are recorded in 579-020-0006.

Adm. Order No.: EOU 3-2008(Temp)

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 4-15-08 thru 9-30-08

Notice Publication Date:

Rules Suspended: 579-020-0008, 579-020-0012, 579-020-0017

Subject: The proposed suspension of these rules creates more accuracy and more closely reflects practice at EOU. All fees charged by Eastern Oregon University are recorded in 579-020-0006, making the above referenced rules obsolete.

Rules Coordinator: Lara Moore—(541) 962-3368

579-020-0008

Fee to Be Charged for the Assessment of Prior Learning and Experience for Credit

Fees:

(1) Application for assessment — \$50 (nonrefundable).

(2) Application for credit to be granted (first three credits covered in application fee) — \$10 per credit after first three credits and up to ten credits; \$5 per credit beyond ten credits.

(3) Portfolio course (required) (may be lower or upper division) —

Two units at regular tuition rate.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: EOSC 8-1979, f. & ef. 10-12-79; Suspended by EOU 3-2008(Temp), f. & cert. ef. 4-15-08 thru 9-30-08

579-020-0012

Special Admission Rates

The Special Admission Rates for Eastern Oregon State College are hereby adopted by reference.

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

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: EOSC 10-1979, f. & ef. 10-12-79; Suspended by EOU 3-2008(Temp), f. & cert. ef. 4-15-08 thru 9-30-08

579-020-0017

Scientific Service Rates

Eastern Oregon State College hereby adopts by reference Scientific Testing Service Rates.

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

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: EOSC 1-1980, f. & ef. 7-1-80; Suspended by EOU 3-2008(Temp), f. & cert. ef. 4-15-08 thru 9-30-08

Oregon University System, Portland State University Chapter 577

Rule Caption: Amends Portland State University's Procedural Rules on Rulemaking.

ADMINISTRATIVE RULES

Adm. Order No.: PSU 1-2008(Temp)

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 4-21-08 thru 10-17-08

Notice Publication Date:

Rules Amended: 577-001-0005, 577-001-0010, 577-001-0020, 577-001-0025, 577-001-0035, 577-001-0040, 577-001-0041, 577-001-0045, 577-001-0050

Rules Suspended: 577-001-0001, 577-001-0014, 577-001-0015, 577-001-0030

Subject: The proposed amendments to Portland State University's procedural rules governing the University's administrative rule making process are necessary to align and conform the process to the requirements of the Oregon Administrative Procedures Act. A copy of the Notice of Proposed Rulemaking, Statement of Need and Fiscal Impact and the text of the proposed rules can be found at <http://www.pdx.edu/fadm>

Rules Coordinator: Tanja Dill—(503) 725-3701

577-001-0001

Definitions

As used in this Division 1:

(1) "University" means Portland State University.

(2) "President" means the President or Acting President of Portland State University.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: PSU 12, f. & ef. 2-22-77; Suspended by PSU 1-2008(Temp), f. 4-15-08, cert. ef. 4-21-08 thru 10-17-08

577-001-0005

Notice of Rulemaking

Prior to the adoption, amendment, or repeal of any rule, the University shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date. Publication in the Bulletin may omit the information required by OAR 577-001-0010(1)(c)-(j).

(2) By mailing a copy of the notice to persons on the University's mailing list established pursuant to ORS 183.335(6) at least 28 days prior to the effective date. At a minimum, the mailing list shall include:

- (a) Associated Press;
- (b) The Oregonian;
- (c) Vanguard;
- (d) Associated Students of Portland State University;
- (e) Portland State University Faculty Association; and
- (f) Labor organizations representing University faculty or staff.

Stat. Auth.: ORS 183, 351

Stats. Implemented: ORS 183.335, 183.341

Hist.: PSU 3, f. & ef. 1-14-76; PSU 12, f. & ef. 2-22-77; PSU 1-2008(Temp), f. 4-15-08, cert. ef. 4-21-08 thru 10-17-08

577-001-0010

Contents of Notice

(1) The notice referred to in OAR 577-001-0005 shall contain the following:

(a) A caption of not more than 15 words that reasonably identifies the subject matter of the University's intended action.

(b) The subject matter and purpose of the proposed action in sufficient detail to inform a person that his or her interest may be affected.

(c) If practicable, the text of the rule to be adopted, amended or repealed. If the text is not included in the notice, the notice shall state the manner in which a copy of the text may be obtained.

(d) A citation of the statute or other legal authority for the rule.

(e) A citation of the statute or other law the rule is intended to implement.

(f) A statement of the need for the rule and how the rule is intended to meet the need.

(g) A list of documents, studies or reports prepared for or relied upon in formulating the rule, and a statement of the location at which those documents are available for public inspection.

(h) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the University shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected.

economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected.

(i) If an advisory committee is not appointed pursuant to ORS 183.025(2), an explanation as to why no advisory committee was used to assist the University in drafting the rule.

(j) If the University plans to hold a public hearing:

(A) The time and place of the hearing and the manner in which interested persons may present their views.

(B) A designation of the person or governing body of the University to conduct the hearing.

(k) If the University does not plan to hold a public hearing:

(A) The time and manner in which data or views may be submitted in writing.

(B) A statement that any interested person desiring to express or submit data or views at a public hearing may request the opportunity to do so.

(C) The time and manner in which requests for a public hearing must be submitted.

(D) A statement that a public hearing will be held if the University receives timely request from ten or more persons or from an association having not less than ten members.

(2) If timely request for a public hearing is received from ten or more persons or from an association having not less than ten members, the University shall give notice of the hearing and conduct it in conformity with these rules.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 183.335, 183.341

Hist.: PSU 12, f. & ef. 2-22-77; PSU 1-2008(Temp), f. 4-15-08, cert. ef. 4-21-08 thru 10-17-08

577-001-0014

Statement of Intended Action

Prior to the adoption, amendment, or repeal of any rule, the University shall prepare a brief written statement of its intended action, including in it the following:

(1) The legal authority of any jurisdiction relied upon and bearing upon the promulgation of the rule.

(2) A statement of the need for the rule and a statement of how the rule is intended to meet the standard.

(3) The citation of applicable portions of the principal documents, reports, or studies prepared by or relied upon by the University in considering the need for and in preparing the rule.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: PSU 1-1978, f. & ef. 1-6-78; Suspended by PSU 1-2008(Temp), f. 4-15-08, cert. ef. 4-21-08 thru 10-17-08

577-001-0015

Submission of Draft of Rule

Prior to the adoption, amendment, or repeal of any rule, the University shall submit a draft of the proposed rule or amendment, or of the rule to be repealed, to the Legislative Counsel Committee and Legislative Counsel.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: PSU 12, f. & ef. 2-22-77; PSU 1-1978, f. & ef. 1-6-78; Suspended by PSU 1-2008(Temp), f. 4-15-08, cert. ef. 4-21-08 thru 10-17-08

577-001-0020

Postponement of Proposed Action

(1) The University shall postpone its proposed action upon timely request of an interested person, to allow the requesting person an opportunity to submit data or views concerning the proposed action.

(2) Postponement of the proposed action shall be not less than 21 days or more than 90 days. In determining the length of postponement, the University shall consider the time necessary to give reasonable notice of the postponement and the complexity of the subject and issues of the proposed action.

(3) This rule does not apply to adoption of temporary rules pursuant to ORS 183.335(5) and OAR 577-001-0050.

Stat. Auth.: ORS 183, 351

Stats. Implemented: ORS 183.335, 183.341

Hist.: PSU 12, f. & ef. 2-22-77; PSU 1-2008(Temp), f. 4-15-08, cert. ef. 4-21-08 thru 10-17-08

577-001-0025

Conduct of Hearing

(1) If a public hearing is held, it shall be conducted by a person designated by the President.

ADMINISTRATIVE RULES

(2) At the commencement of the hearing, any person wishing to be heard shall inform the presiding officer in writing of his or her name, address, affiliation, and position in favor of or opposition to the proposed action. The presiding officer shall provide a form for that purpose. Additional persons may be heard at the discretion of the presiding officer.

(3) Subject to the discretion of the presiding officer, the order of the presentation shall be:

- (a) Statements of proponents;
- (b) Statements of opponents; and
- (c) Statements of any other witness present and wishing to be heard.

(4) The presiding officer may question or examine any witness making a statement at the hearing. At the discretion of the presiding officer, other persons may be permitted to examine witnesses.

(5) There shall be no rebuttal or additional statement given by any witness unless requested by the presiding officer. However, when such additional statement is given, the presiding officer shall allow an equal opportunity for reply.

(6) The hearing may be continued with recesses as determined by the presiding officer until all listed witnesses present and desiring to make statements have had an opportunity to do so.

(7) The presiding officer shall, if practicable, receive all physical and documentary evidence presented by witnesses. Exhibits shall be marked and shall identify the witnesses offering them. The exhibits shall be preserved by the University for one year or, in the discretion of the University, returned to the witnesses offering them.

(8) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.

(9) A recording or verbatim record shall be made of the hearing or, in the alternative, a record in the form of minutes.

Stat. Auth.: ORS 183, 351

Stats. Implemented: ORS 183.335, 183.341

Hist.: PSU 12, f. & ef. 2-22-77; PSU 1-2008(Temp), f. 4-15-08, cert. ef. 4-21-08 thru 10-17-08

577-001-0030

Presiding Officer's Report

Upon request by the President, the presiding officer shall, within a reasonable time after the hearing, provide a written summary of statements given and exhibits received and a report of his observations of physical experiments, demonstrations, or exhibits.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: PSU 12, f. & ef. 2-22-77; Suspended by PSU 1-2008(Temp), f. 4-15-08, cert. ef. 4-21-08 thru 10-17-08

577-001-0035

Action of University

The University may adopt, amend, or repeal rules covered by the notice of proposed action at any time after the conclusion of the hearing or, if no hearing is held, on or after the date specified in the notice of proposed action.

Stat. Auth.: ORS 183, 351

Stats. Implemented: ORS 183.335, 183.341

Hist.: PSU 12, f. & ef. 2-22-77; PSU 1-2008(Temp), f. 4-15-08, cert. ef. 4-21-08 thru 10-17-08

577-001-0040

Filing With Secretary of State

(1) The University shall file in the office of the Secretary of State a certified copy of each rule as adopted or amended and each notice of repeal.

(2) A rule shall be effective upon filing unless a later effective date is required by statute or specified in the rule.

Stat. Auth.: ORS 183, 351

Stats. Implemented: ORS 183.335, 183.341

Hist.: PSU 12, f. & ef. 2-22-77; PSU 1-1978, f. & ef. 1-6-78; PSU 1-2008(Temp), f. 4-15-08, cert. ef. 4-21-08 thru 10-17-08

577-001-0041

Submission of Rule to Legislative Counsel

Within 10 days of filing an adopted or amended rule or notice of repeal with the Secretary of State, the University shall send a copy of the rule or notice of repeal to Legislative Counsel.

Stat. Auth.: ORS 183, 351

Stats. Implemented: ORS 183.335, 183.341

Hist.: PSU 1-1978, f. & ef. 1-6-78; PSU 1-2008(Temp), f. 4-15-08, cert. ef. 4-21-08 thru 10-17-08

577-001-0045

Petitions Requesting Promulgation, Amendment, or Repeal of Rules

(1) An interested person may petition the University to adopt, amend, or repeal a rule. The petition shall state the name and address of the petitioner and any other person known to the petitioner to be interested in the rule. The petition shall be legible, signed by or on behalf of the petitioner, and shall contain a detailed statement of:

(a) The rule petitioner requests the University to adopt, amend, or repeal. When a new rule is proposed, the petitioner shall set forth the proposed language in full. When an amendment of an existing rule is proposed, the rule shall be set forth in the petition in full with matter proposed to be deleted and proposed additions shown by a method that clearly indicates proposed deletions and additions;

(b) Facts or arguments in sufficient detail to show the reasons for and effects of adoption, amendment, or repeal of the rule; and

(c) All propositions of law to be asserted by petitioner.

(2) If the petitioner requests the amendment or repeal of an existing rule, the petition must also contain comments on:

(a) Options for achieving the existing rule's substantive goals while reducing the negative economic impact on businesses;

(b) The continued need for the existing rule;

(c) The complexity of the existing rule;

(d) The extent to which the existing rule overlaps, duplicates, or conflicts with other state or federal rules and with local government regulations; and

(e) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the University adopted the rule.

(3) If a petition requests the amendment or repeal of a rule, before denying a petition, the University must invite public comment upon the rule, including whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses.

(4) The University:

(a) May provide a copy of the petition, together with a copy of the applicable rules of practice, to all persons named in the petition;

(b) May schedule oral presentations; and

(c) Shall, in writing, within 90 days after receipt of the petition, either deny the petition or initiate rulemaking proceedings.

Stat. Auth.: ORS 183, 351

Stats. Implemented: ORS 183.335, 183.390

Hist.: PSU 12, f. & ef. 2-22-77; PSU 1-2008(Temp), f. 4-15-08, cert. ef. 4-21-08 thru 10-17-08

577-001-0050

Temporary Rules

(1) The University may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that is practicable, to adopt or amend a rule without the notice otherwise required. In such a case, the University shall:

(a) File with the Secretary of State the rule and the University's findings that failure to act promptly will result in serious prejudice to the public interest or to the interest of the parties concerned and the reasons for that finding, a citation of the statutory or other legal authority relied upon and bearing upon the adoption of the rule, a statement of the need for the rule and a statement of how the rule is intended to meet the need, and a list of the principal documents, reports or studies, if any, prepared by or relied upon by the University in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection;

(b) Take appropriate measures to make the temporary rule known to the persons who may be affected;

(c) Furnish copies of the temporary rule to the mailing list required by OAR 577-001-0005(1)(b); and

(d) File a copy of the adopted or amended rule with Legislative Counsel within 10 days after filing with the Secretary of State.

(2) Unless a later date is specified in the temporary rule, it shall be effective upon filing with the Secretary of State.

(3) Temporary rules may be effective for no longer than 180 days. They may not be renewed. The University may, however, adopt identical permanent rules with notice pursuant to Division 1 of these Rules, and may give such notice contemporaneously with adoption of the temporary rule.

(4) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary period of suspension unless the rule is repealed with notice pursuant to Division 1 of these Rules prior to the expiration of the temporary rule.

Stat. Auth.: ORS 183, 351

Stats. Implemented: ORS 183.335, 183.341

ADMINISTRATIVE RULES

Hist.: PSU 12, f. & ef. 2-22-77; PSU 1-1978, f. & ef. 1-6-78; PSU 1-2008(Temp), f. 4-15-08, cert. ef. 4-21-08 thru 10-17-08

Rule Caption: Amends Portland State University's Rules Regarding Maintenance of and Access to Student Records.

Adm. Order No.: PSU 2-2008(Temp)

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 5-1-08 thru 10-24-08

Notice Publication Date:

Rules Adopted: 577-030-0016, 577-030-0021

Rules Amended: 577-030-0005, 577-030-0010, 577-030-0015, 577-030-0020, 577-030-0025, 577-030-0030, 577-030-0040, 577-030-0045, 577-030-0050, 577-030-0060, 577-030-0065, 577-030-0070

Rules Suspended: 577-030-0075

Subject: Portland State University is required to comply with the federal Family Educational Rights and Privacy Act of 1974 ("FERPA") and the regulations of the U.S. Department of Education implementing FERPA. The proposed amendments to Portland State University's rules regarding student records better align Portland State University's rules regarding maintenance of and access to student records with the rights and procedures afforded to students by FERPA. A copy of the Notice of Proposed Rulemaking, Statement of Need and Fiscal Impact and the text of the proposed rules can be found at <http://www.pdx.edu/fadm>.

Rules Coordinator: Tanja Dill—(503) 725-3701

577-030-0005

Purpose and General Policies

(1) Portland State University is required to comply with the federal Family Educational Rights and Privacy Act of 1974, 20 USC 1232g, as amended, and other federal and state laws governing access to and confidentiality of records and information pertaining to students. This policy is intended to inform students and others generally of their rights and guide the University in its management of student records and information.

(2) Only such records as are demonstrably and substantially relevant to the educational and related purposes of the University, division, or department shall be generated and maintained.

(3) No student shall be required to give (although the student may voluntarily provide) information as to the student's race, religion, sex, age, handicap, national origin, marital status, political affiliation, sexual orientation, gender identity, or personal values, except as specifically required by state or federal law, rules, or orders.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070, 20 USC 1232g

Hist.: PSU 14, f. & ef. 4-26-77; PSU 2-2008(Temp), f. 4-15-08, cert. ef. 5-1-08 thru 10-24-08

577-030-0010

Definitions

(1) "Act" means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. sec. 1232g, as amended, its implementing regulations (particularly those found in 34 C.F.R. Part 99), and any other official guidance issued by the U.S. Department of Education.

(2) "Directory information" means a student's full name, address, telephone number, electronic mail addresses, dates of attendance, major or minor field of study, degrees and awards received, number of credits earned, participation in officially recognized activities and sports, weight and height of members of athletic teams, and the facts of enrollment, including whether the student is enrolled full-time or part-time;

(3)(a) "Education records" means records that are directly related to a student and that are maintained by the University or by a person acting for the University.

(b) To the extent set forth in the Act, "education records" do not include:

(A) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(B) Records of the Campus Public Safety Office;

(C) Records related to an employee of the University, unless the individual is in attendance at the University and is employed as a result of his or her status as a student;

(D) Treatment records concerning a student that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity; or

(E) Records that only contain information about an individual after he or she is no longer a student at the University.

(4) "Legitimate educational interest" means a reasonable need to know information in the course of carrying out one's professional duties.

(5) "Personally identifiable information" means a student's name, the name of a student's parents or other family members, a student's address, a student's personal identifier such as Social Security number or student number, and other personal information or characteristics that would make a student's identity easily traceable.

(6) "School official" means a person employed by the University or in the chancellor's office of the Oregon University System; a person or entity, including a governmental entity, with whom the University or the Oregon University System has contracted; a person serving on the University's governing board; or a student serving on an official committee or assisting another school official in performing his or her duties.

(7) "Student" means anyone who is or has been registered at Portland State University. A person who is or has been registered in one component of the University and who has applied for admission to but has not been admitted or registered in another component of the University is not a student with respect to the component in which his or her application and registration are pending.

(8) "Unit Custodian of Student Records" means the head of each academic or administrative unit responsible for the education records within that unit.

(9) "University Custodian of Student Records" means the Vice Provost for Student Affairs or any other person officially delegated University-wide responsibility for education records by the University President.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070, 20 USC 1232g

Hist.: PSU 14, f. & ef. 4-26-77; PSU 1-2002, f. & cert. ef. 10-22-02; PSU 2-2008(Temp), f. 4-15-08, cert. ef. 5-1-08 thru 10-24-08

577-030-0015

Release of Personally Identifiable Information With Consent

Except as provided in the Act or other applicable law and OAR 577-030-0016, the University will not disclose personally identifiable information from a student's education records unless the student provides a signed and dated written consent which specifies the records that may be disclosed, states the purpose of the disclosure, and identifies the party or class of parties to whom the disclosure may be made.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070, 20 USC 1232g

Hist.: PSU 14, f. & ef. 4-26-77; PSU 3-1981, f. & ef. 12-3-81; PSU 2-2008(Temp), f. 4-15-08, cert. ef. 5-1-08 thru 10-24-08

577-030-0016

Release of Personally Identifiable Information Without Consent

The University may, in its discretion and to the extent permitted by the Act, disclose personally identifiable information from an education record without the student's consent if one of the following conditions is met:

(1) The disclosure is to a school official who has a legitimate educational interest.

(2) The disclosure is to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is to comply with a judicial order or lawfully issued subpoena as provided in OAR 577-030-0021.

(4) The disclosure is in connection with a health or safety emergency, if disclosure is necessary to protect the health or safety of the student or other person. In such an instance information may be disclosed only if the threat to health or safety is serious, if the information is needed to meet the emergency, and if time is critical in dealing with the emergency. These requirements are to be strictly construed.

(5) The disclosure is to an organization conducting legitimate educational research, testing, accreditation functions, granting financial aid, or improving instruction; provided, that such data does not permit identification of the student or parents to others and the information is to be destroyed when no longer needed to carry out its specified purpose(s).

(6) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility for the aid, determine the amount of the aid, determine the conditions for the aid, or enforce the terms and conditions of the aid. As used in paragraph, "financial aid" means a payment of funds provided to a student (or a payment in kind of tangible or intangible

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property to a student) that is conditioned on a student's attendance at the University.

(7) The disclosure is of directory information, unless the student has requested in writing that directory information be kept confidential as provided in OAR 577-030-0020.

(8) The disclosure is to a victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense. The disclosure may only include the final results of the disciplinary proceeding conducted by the University with respect to that alleged crime or offense.

(9) The disclosure is in connection with a disciplinary proceeding at the University and the University determines that:

(a) The student is an alleged perpetrator of a crime of violence or non-forcible sex offense; and

(b) The student has committed a violation of the institution's rules or policies with respect to the allegation made against him or her. The University may not disclose the name of any other student, including a victim or witness, without the prior written consent of the other student. This subsection applies only to disciplinary proceedings in which the final results were reached on or after October 7, 1998.

(10) The disclosure is otherwise in compliance with the Act or other applicable law.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070, 20 USC 1232g
Hist.: PSU 2-2008(Temp), f. 4-15-08, cert. ef. 5-1-08 thru 10-24-08

577-030-0020

Release and Restriction of Directory Information

(1) Upon request, the Office of Admission, Registration & Records and the Office of Institutional Research may disclose directory information..

(2) A student may request that his or her directory information not be released by submitting a Student Records Privacy Request form to the Office of Admission, Registration & Records. The restriction becomes effective as soon as is reasonably practicable and remains in effect until revoked in writing. Such a restriction may be placed or removed not more than once per academic term.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070, 20 USC 1232g
Hist.: PSU 14, f. & ef. 4-26-77; PSU 2-2008(Temp), f. 4-15-08, cert. ef. 5-1-08 thru 10-24-08

577-030-0021

Response to Subpoenas and Court Orders

(1) Except as provided in paragraph (2) of this rule, if a lawfully issued subpoena or court order requires the production of an education record, the University shall immediately make a reasonable effort to notify the student of the order or subpoena in advance of compliance so that the student may seek protective action.

(2) If a federal grand jury subpoena or any other subpoena issued for a law enforcement purpose requires the production of an education record and orders that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed, then the University shall not notify the student. Any law enforcement subpoena or court order requiring that the existence of the subpoena or the information furnished in response to the subpoena be kept confidential shall be immediately sent to the University's Office of General Counsel for review prior to compliance.

(3) Subpoenas seeking education records are typically served on the Office of Admission, Registration & Records. The Office of Admission, Registration & Records shall be informed whenever the University or a University employee is served with a subpoena seeking education records.

(4) Questions regarding the validity of a subpoena or court order or the appropriate response thereto should be directed to the University's Office of General Counsel.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070, 20 USC 1232g
Hist.: PSU 2-2008(Temp), f. 4-15-08, cert. ef. 5-1-08 thru 10-24-08

577-030-0025

Location and Custody of Student Records

(1) Student Records shall be kept in locations central to the University, or to the colleges, schools, divisions, or departments in which they are maintained, with the custody thereof assigned to designated personnel specifically charged with maintaining the confidentiality of the records.

(2) The Vice Provost for Student Affairs shall be the University Custodian of Student records.

(3) The Office of Admission, Registration & Records is the initial point of contact for questions related to these rules.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070, 20 USC 1232g
Hist.: PSU 14, f. & ef. 4-26-77; PSU 2-2008(Temp), f. 4-15-08, cert. ef. 5-1-08 thru 10-24-08

577-030-0030

Student Access to Records

(1) Except as provided in paragraph (3) of this rule, a student may inspect and review, with the appropriate record custodian or in his or her absence a staff member of the office or department that maintains the record, any education records that pertain to the student. Access to records shall be provided as soon as practicable, but not later than 45 days following the request.

(2) If circumstances effectively prevent a student from exercising the right to inspect and review his or her education records, the student may make a written request for a copy of the records. Copies shall be provided as soon as practicable, but not later than 45 days following the request. The student may be charged a fee for the copying at the prevailing University rate for photocopy services.

(3) The following records are not available to students:

(a) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the records.

(b) Records relating to an individual who is employed by the University which are made and maintained in the normal course of business and which relate exclusively to the individual in question in his or her capacity as an employee, and are not available for any other purpose. This paragraph does not apply to records relating to an individual in attendance at the University who is employed as a result of his or her status as a student.

(c) Records made or maintained by a physician, psychiatrist, psychologist, or other professional or paraprofessional acting in a professional capacity related to treating a student. However, such records may be reviewed by a physician or other appropriate professional at the student's written request.

(d) Financial records of the student's parents or guardians, unless they have given written consent to the student seeking the records.

(e) Confidential appraisals, evaluations or recommendations placed in an education record prior to January 1, 1975, if the appraisals, evaluations or recommendations continue to be used only for their original purpose.

(f) Confidential appraisals, evaluations or recommendations received after January 1, 1975 for which the student has signed a waiver of the right of access and which relate to the student's admission to an educational institution, application for employment, or recommendation for or receipt of an honor or other form of recognition.

(g) Records of the Campus Public Safety Office which are created and maintained for law enforcement purposes and which are not otherwise available to the public.

(h) Copies of transcripts of grades of a student sent to the University by other educational institutions.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070, 20 USC 1232g
Hist.: PSU 14, f. & ef. 4-26-77; PSU 2-2008(Temp), f. 4-15-08, cert. ef. 5-1-08 thru 10-24-08

577-030-0040

Waivers of Right to Access

(1) A person applying for admission, or a student, may voluntarily waive the right of access to confidential letters of appraisal, evaluation or recommendation regarding admission, employment, or the receipt of an honor or honorary recognition. A person providing a waiver is entitled, upon request, to be notified of the names of all persons providing confidential appraisals, evaluations or recommendations. Such waivers must be in writing, signed by the student, and submitted to the Office of Admission, Registration & Records.

(2) Under no circumstances can a student be compelled to waive his or her right to access education records.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070, 20 USC 1232g
Hist.: PSU 14, f. & ef. 4-26-77; PSU 2-2008(Temp), f. 4-15-08, cert. ef. 5-1-08 thru 10-24-08

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577-030-0045

Files or Records Containing Letters of Appraisal, Evaluation or Recommendation

(1) Letters Received Prior to January 1, 1975: No letters of appraisal, evaluation or recommendation received prior to January 1, 1975, shall be revealed to a person applying for admission or to a student unless the author notifies the unit custodian in writing of his or her agreement.

(2) Letters Received After January 1, 1975: Such letters shall be treated as follows:

(a) Unless a waiver from the student, as provided in OAR 577-030-0040, is on file, letters of appraisal, evaluation or recommendation solicited with an assurance to the writer of confidentiality, or if the writer claims confidentiality, shall be returned to the writer. The return letter to the writer shall inform the writer that the document is open to review by the student under the Act. If the writer is willing to resubmit the letter under that condition, the writer is asked to return the letter.

(b) Letters of appraisal, evaluation or recommendation which were not solicited with an assurance of confidentiality nor which claim confidentiality shall be open for review by the applicant or student involved, unless a waiver from the student, as provided in OAR 577-030-0040, is on file.

(3) University application instructions and appraisal forms shall inform writers and applicants or students of student rights of access to letters of appraisal, evaluation or recommendation under this section.

(4) Where a student exercises a waiver in accordance with OAR 577-030-0040 and requests that letters of appraisal, evaluation or recommendation be sent to graduate or professional schools for admission purposes, the student does not have the right to designate which letters are to be sent.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070, 20 USC 1232g
Hist.: PSU 14, f. & ef. 4-26-77; PSU 2-2008(Temp), f. 4-15-08, cert. ef. 5-1-08 thru 10-24-08

577-030-0050

Non-Release to Third Parties

All copies of educational records released pursuant to these rules shall state that: "Under the provisions of the Family Education Rights and Privacy Act of 1974 (as amended), the information contained in this document is not to be released to others without the written consent of the student named herein."

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070, 20 USC 1232g
Hist.: PSU 14, f. & ef. 4-26-77; PSU 2-2008(Temp), f. 4-15-08, cert. ef. 5-1-08 thru 10-24-08

577-030-0060

Record of Access to Student Records

A written notation shall be made in a student's educational record of each occasion that a person outside the University is given access to it. The notation should indicate the person's name, organization represented, the date and the reason for granting access. However, such notation is not required when:

- (1) The disclosure is made to the student;
- (2) The disclosure is made pursuant to the student's written consent.

The written consent must be kept as a permanent part of the student's record;

(3) The disclosure is made to University officials with a legitimate educational interest;

(4) The disclosure consists of directory information not restricted by the student;

(5) The disclosure is made to other officials as permitted by OAR 577-030-0015; or

(6) The disclosure is as directed by a federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070, 20 USC 1232g
Hist.: PSU 14, f. & ef. 4-26-77; PSU 2-2008(Temp), f. 4-15-08, cert. ef. 5-1-08 thru 10-24-08

577-030-0065

Permanence, Duplication, and Disposal of Student Records

(1) Permanent education records shall be maintained only for the minimum period of time required to serve the official functions of the office generating and maintaining them. The records shall then be disposed of in a manner designed to assure confidentiality.

(2) The permanent retention of education records shall be limited to records that the president or the State Archivist determine to be of long-range value to the student or the University.

(3) Duplication of permanent education records shall be minimized. Duplicate permanent records shall be destroyed in accordance with this rule.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070, 20 USC 1232g
Hist.: PSU 14, f. & ef. 4-26-77; PSU 2-2008(Temp), f. 4-15-08, cert. ef. 5-1-08 thru 10-24-08

577-030-0070

Notice to Students

At least annually, the University shall provide notice to students of their rights under the Act in a manner reasonably likely to inform students of such rights. The notice shall comply with the applicable provisions of the Act.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070, 20 USC 1232g
Hist.: PSU 14, f. & ef. 4-26-77; PSU 2-2008(Temp), f. 4-15-08, cert. ef. 5-1-08 thru 10-24-08

577-030-0075

Description of Student Records

(1) Records Created and/or Maintained by Service and Administrative Units:

(a) Registrar's Permanent Record:

(A) This record, compiled and permanently maintained in the Registrar's Office, contains for each student a complete history of academic enrollment, academic progress and achievement, and all related official action;

(B) Students may arrange to have the Registrar's Office send official copies of this record to whomever they choose;

(C) Actions taken by the University resulting in academic disqualification and re-instatement of a student are recorded on the student's permanent record;

(D) The unit custodian of these records shall be the Registrar.

(b) Permanent Academic Folder:

(A) This record contains the formal application for admission and all supporting documents required in evaluation of admission. It also contains official supporting action taken by faculty members and university committees which is related to entries recorded on the permanent academic record and other documents and forms related to the student's academic record such as the evaluation of transfer courses, graduation check, supplemental grade reports, residency forms, etc.;

(B) This record is originated and permanently maintained in the Office of the Registrar;

(C) The unit custodian of these records shall be the Registrar.

(c) Official Enrollment Lists:

(A) The Office of the Registrar maintains permanent official enrollment lists which contain the course enrollment of all students registered in the University;

(B) The unit custodian of these records shall be the Registrar.

(d) Disciplinary Records:

(A) Disciplinary records are those records of charges made and the evidence and proceedings related to the charges with respect to a named student and involving infractions, for which sanctions may be imposed, of University or Oregon State Board of Higher Education regulations;

(B) The unit custodian of these records shall be the Dean of Students.

(e) Records in the Office of the Dean of Students:

(A) A consultation folder may be initiated with or for a student whenever a student contacts the Office of the Dean of Students. The folder contains notations and documents pertinent to the professional staff's working relationship with the student;

(B) The unit custodian of these records shall be the Dean of Students.

(f) Office of International Student Services:

(A) An advising folder is initiated for each foreign student upon initial registration at the University. This folder contains copies of pertinent Immigration and Naturalization forms, and correspondence relating to admissions, governmental and international agencies concerned with the student, as well as correspondence and documents related to the financial arrangements under which the student will attend the University;

(B) The unit custodian of these records shall be the Coordinator of International Student Services.

(g) Student Rights and Organization Membership Records:

(A) No records of membership in student organizations, except membership lists of honoraries and such other lists as may be required for

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registration of student organizations and official purposes of the Associated Students of Portland State University and the Educational Community Activities Policy Board, shall be maintained;

(B) Student organizations are required, however, to provide the Office of Educational Activities with the names of current officers to whom communications are to be directed;

(C) The unit custodian of these records shall be the Director of Educational Activities.

(h) Career Planning and Placement Office Placement Files:

(A) These files contain forms submitted by the student and letters of recommendation written by persons whom the student lists as references;

(B) The unit custodian of these records shall be the Director of Financial Aids and Placement.

(i) Counseling Center Records:

(A) Records are created for students using the services of the Counseling Center. All data in these records, which are maintained in the Counseling Center, are privileged and confidential;

(B) The unit custodian of these records shall be the Director of the Counseling Center.

(j) Office of Financial Aids Records:

(A) Records are created and maintained in the Financial Aids Office for each student applying for and/or receiving financial assistance through the University. These records include the original and subsequent applications for financial aid, a financial analysis report from the student and the student's family, a report of work experience, a record of assistance awarded, etc.;

(B) The unit custodian of these records shall be the Director of Financial Aids and Placement.

(k) Student Health Service Records:

(A) A health record is created and maintained in the Student Health Service for all regular students enrolled in the University. These records include the entrance physical history form supplied by the student and records of any service provided to the student by the office. Such records are privileged and confidential;

(B) The unit custodian of these records shall be the Director of the Student Health Services.

(l) Student Payroll Records:

(A) Records are established and maintained by the Business Office of all payments made to students employed by the University;

(B) The unit custodian of these records shall be the Director of Business Affairs.

(m) Student Employee Evaluation Records:

(A) These records contain evaluations of the job performance of students by a school or department;

(B) The unit custodian of these records shall be the chief administrator of the school or department employing a student.

(n) Computing Services Center Records:

(A) The Computing Services Center maintains a variety of student records on behalf of other University units;

(B) Such records shall be released only with the consent of and under the conditions specified by the custodian of the unit on behalf of which the records are maintained;

(C) The unit custodian of these records shall be the Director of the Computing Services Center.

(o) Other Records Created and/or Maintained by Service and Administrative Units:

(A) Such records as may be compiled and maintained by service and administrative units not specified above in this rule shall be used only for the purpose(s) for which they are intended, as stated in OAR 577-030-0010(2)(a);

(B) The unit custodian(s) of such records shall be the official(s) designated by the University to be the director(s) or supervisor(s) of the service and administrative unit(s) creating and/or maintaining the records.

(2) Records Created and/or Maintained by Instructional Units:

(a) School or Department Graduate Admissions Folders:

(A) These records contain the formal application for admission and all supporting documents submitted by the student and are maintained in the central office of the student's major school or department;

(B) The unit custodian of these records shall be the chief administrator of the school or department in which the student is majoring.

(b) Applications for School or Departmental Assistantships, Scholarships, or Other Awards:

(A) These records contain the student's application for such award and all supporting documents submitted by the student;

(B) The unit custodian of these records shall be the chief administrator of the school or department to which the student is applying for such awards.

(c) Academic Advising Folders:

(A) Academic advising folders contain such documents and other materials as enable faculty to work effectively with students as academic advisors. These folders are maintained by individual faculty members or by departmental offices;

(B) The unit custodian of these records shall be the chief administrator of the school or department in which the student is majoring.

(d) Student Employee Evaluation Records:

(A) These records, created and maintained by the employing school or department, contain evaluations of the job performance of students employed therein;

(B) The unit custodian of these records shall be the chief administrator of the school or department in which students are employed.

(e) Student Teaching Records:

(A) The student teacher's folder, created and maintained in the School of Education, contains students' applications, copies of students' permanent academic records and written evaluations of students' student teaching performance submitted by students' supervisors;

(B) The unit custodian of these records shall be the Dean of the School of Education.

(f) Class Lists:

(A) Class lists contain the names of all students who are officially enrolled in each class;

(B) The unit custodian of these records shall be the individual faculty member or chief administrator of the appropriate school or department.

(g) Final Grade Reports:

(A) Final Grade reports are records of the grades received by all students enrolled in a course, a copy of which is retained by the school or department;

(B) The Registrar retains one copy of all final grade reports permanently and shall be the unit custodian of these records.

(h) Grade Books and Attendance Records:

(A) Grade books contain members' notations of students' progress in classes and may contain record of students' attendance;

(B) The unit custodian of these records shall be the individual faculty member who creates and maintains such records.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: PSU 14, f. & ef. 4-26-77; Suspended by PSU 2-2008(Temp), f. 4-15-08, cert. ef. 5-1-08 thru 10-24-08

Rule Caption: Amends Portland State University's Rule Regarding Health Insurance Requirements for Non-immigrant International Students and Dependents.

Adm. Order No.: PSU 3-2008(Temp)

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 5-1-08 thru 10-24-08

Notice Publication Date:

Rules Ren. & Amend: 577-030-0080 to 577-034-0001

Subject: The proposed amendments update Portland State University's administrative rule establishing health insurance requirements for non-immigrant international students and their dependents living in the United State. These amendments provide greater detail than the current rule, consistent with current University practice. A copy of the Notice of Proposed Rulemaking, Statement of Need and Fiscal Impact and the text of the proposed rules can be found at <http://www.pdx.edu/fadm>.

Rules Coordinator: Tanja Dill—(503) 725-3701

577-034-0001

Health Insurance Requirements for Non-Immigrant International Students and Their Dependents Living in the United States

(1) In order to assist the University in complying with federal regulations, and to ensure the quality of the educational and cultural experience of non-immigrant international students, such students must demonstrate their ability to meet their financial responsibilities in full. These responsibilities include the provision by non-immigrant international students of medical care for themselves and dependent family members in the United States.

(2) As used in this rule, "PSU Plan" means the insurance plan available through the University for non-immigrant international students.

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(3) All non-immigrant international students enrolled part- or full-time at the University shall provide health insurance coverage for themselves and their dependent family members in the United States. Non-immigrant international students may fulfill this requirement by enrolling themselves and their dependent family members in the PSU Plan, or by securing a comparable insurance waiver under section (5) of this rule, within 21 days of enrollment at the University.

(4) Charges for enrollment of international students and their dependents in the PSU Plan will automatically be billed to such students' University accounts unless they have secured a comparable insurance waiver under section (5) of this rule. Students who are enrolled for spring term will automatically be billed and enrolled for both spring and summer term, unless proof can be provided that following spring graduation the individual will depart the United States.

(5) Non-immigrant students who meet certain eligibility criteria as defined by the University may apply for a waiver of the requirement to use the PSU Plan. Such application shall be submitted to the Insurance Specialist in the Office of International Student and Scholar Services on a form provided by that office, which will require documentation of coverage. A waiver of the PSU Plan may be granted only when the student is covered by an alternative policy, plan or contract that provides comparable coverage:

(a) "Comparable coverage" means that the alternative policy, plan or contract meets or exceeds all levels of coverage provided by the PSU Plan, including any exclusions, the maximum amount of coverage per accident and illness, and the maximum amount of cumulative benefit; and that the alternative policy, plan or contract is either backed by the full faith and credit of the government of the international student's home country; is part of a health benefits program offered on a group basis to employees or enrolled students by a designated sponsor; or is an alternative plan lawfully sold in Oregon;

(b) Documentation of such coverage must indicate in English the insurance company's name and address for billing purposes, policy number, the coverage terms of the policy, the effective dates of the policy, and any exclusions, the names of the individuals covered by the policy, and the maximum amount of coverage per accident and illness and/or in terms of cumulative benefits;

(c) In all cases proof of continuous coverage is required during the student's program of study; and

(d) Notwithstanding section (5)(a) of this rule, the Vice Provost for International Affairs may designate as comparable coverage any plan for which non-immigrant international students are eligible that is offered through a University-recognized collective bargaining agreement.

(6) A non-immigrant international student whose request for a comparable insurance waiver is denied shall be enrolled in the PSU Plan and premiums will be billed to the student's University account.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: PSU 4-1992, f. & cert. ef. 7-21-92; Renumbered from 577-030-0080, PSU 3-2008(Temp), f. 4-15-08, cert. ef. 5-1-08 thru 10-24-08

Oregon University System, Southern Oregon University Chapter 573

Rule Caption: Special Fees.

Adm. Order No.: SOU 4-2008

Filed with Sec. of State: 4-9-2008

Certified to be Effective: 4-15-08

Notice Publication Date: 3-1-2008

Rules Amended: 573-040-0005

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

Rules Coordinator: Treasa Sprague—(541) 552-6319

573-040-0005

Special Fees

The Special Fees for certain courses and general services approved by Southern Oregon University are hereby adopted by reference.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & OAR 580-040-0010

Hist.: SOSC 4, f. & cert. ef. 9-2-76; SOSC 10, f. & cert. ef. 5-9-77; SOSC 6-1978, f. & cert. ef. 6-2-77; SOSC 8-1978, f. & cert. ef. 12-15-78; SOSC 2-1979, f. & cert. ef. 6-20-79; SOSC 4-1980, f. & cert. ef. 5-20-80; SOSC 4-1980, f. & cert. ef. 5-20-80; SOSC 2-1981, f. & cert. ef. 6-2-81; SOSC 3-1982, f. & cert. ef. 7-1-82; SOSC 4-1983, f. & cert. ef. 5-26-83; SOSC 1-1984, f. & cert. ef. 6-20-84; SOSC 4-1985, f. & cert. ef. 6-3-85; SOSC 9-1985, f. & cert. ef. 12-17-85; SOSC 2-1986, f. & cert. ef. 5-30-86; SOSC 1-1987, f. & cert. ef. 6-5-87; SOSC 4-1987, f. & cert. ef. 9-4-87; SOSC 1-1988, f. & cert. ef. 5-19-88; SOSC 2-1988(Temp), f. & cert. ef. 9-2-88; SOSC 4-1988, f. & cert. ef. 11-23-88; SOSC 3-1989, f. & cert. ef. 6-1-89; SOSC 3-1990, f. & cert. ef. 5-31-90; SOSC 3-1991, f. & cert. ef. 5-30-91; SOSC 1-1992, f. & cert. ef. 6-3-92; SOSC 3-1993, f. & cert. ef. 5-21-93; SOSC 2-1994, f. & cert. ef. 6-10-94; SOSC 1-1995, f. & cert. ef. 6-7-95; SOSC 1-1996, f. & cert. ef. 6-5-96; SOU 1-1997, f. & cert. ef. 5-20-97; SOU 1-1998, f. & cert. ef. 4-23-98; SOU 2-1999, f. & cert. ef. 5-7-99; SOU 1-2000, f. & cert. ef. 4-10-00; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 1-2002, f. & cert. ef. 4-11-02; SOU 1-2003, f. & cert. ef. 4-16-03; SOU 1-2004, f. & cert. ef. 4-5-04; SOU 1-2005, f. & cert. ef. 4-11-05; SOU 1-2006, f. & cert. ef. 3-31-06; SOU 1-2007, f. & cert. ef. 4-25-07; SOU 4-2008, f. 4-9-08, cert. ef. 4-15-08

Oregon Watershed Enhancement Board Chapter 695

Rule Caption: Rules describing OWEB implementation of the public records law, ORS 192.410 to 192.505.

Adm. Order No.: OWEB 1-2008

Filed with Sec. of State: 3-25-2008

Certified to be Effective: 3-25-08

Notice Publication Date: 1-1-2008

Rules Adopted: 695-003-0010, 695-003-0020, 695-003-0030, 695-003-0040

Subject: The new rules in OAR 695-003 establish procedures and fees for the Oregon Watershed Enhancement Board to respond to public records requests. The proposed rules address requests to inspect or to obtain copies of public records, fees for inspections or copies of public records, exceptions to fee charge, and fee waivers and reductions.

Rules Coordinator: Melissa Leoni—(503) 986-0179

695-003-0010

Purpose

These rules govern implementation by the Oregon Watershed Enhancement Board (OWEB) of the public records law, ORS 192.410 to 192.505, including fees for recovery of the actual costs involved in making public records available and in providing copies of public records, pursuant to ORS 192.440.

Stat. Auth.: ORS 541.369, 192.430, 192.440

Stats. Implemented: ORS 192.410 - 192.505

Hist.: OWEB 1-2008, f. & cert. ef. 3-25-08

695-003-0020

Requests to Inspect or Obtain Copies of Public Records

(1) The right to review public records includes the right to review the original public record where practicable. The requester does not have a right to personally locate the public record or to review portions of the public record that are exempt from disclosure pursuant to ORS 192.501 to 192.505.

(2) A request to inspect or obtain copies of a public record or information from public records must be made in writing to the Public Records Coordinator at the Oregon Watershed Enhancement Board, 775 Summer Street NE, Suite 360, Salem, OR 97301-1290, and must include:

(a) The name, mailing address, email address, and telephone number of the requester;

(b) Identification of the needed public record or of the type and format of needed public record information, if known to the requester;

(c) The time period the records or information were produced, and the officials involved in producing the records or relevant information, if known to the requester; and

(d) The number of copies for each item requested of the record, if copies are requested.

(3) OWEB will make all its public records, not otherwise exempt from disclosure by law, available for inspection and copying during regular business hours.

(4) OWEB may condition the time and manner of inspection or copying as necessary under the circumstances to protect the records and prevent interference with the regular discharge of the duties of the OWEB Board, OWEB, and OWEB's employees.

(5) OWEB will accommodate public records requests from persons with disabilities in accordance with the Americans with Disabilities Act.

Stat. Auth.: ORS 541.369, 192.430, 192.440

Stats. Implemented: ORS 192.410 - 192.505

Hist.: OWEB 1-2008, f. & cert. ef. 3-25-08

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695-003-0030

Fees for Inspections or Copies of Public Records

(1) A person inspecting a public record or receiving a copy of a public record or information from a public record must pay OWEB's actual costs, as follows:

(a) The cost of staff time necessary to locate and handle the records, to delete material exempt from disclosure and to supervise the inspection by the requester;

(b) The cost of producing the copy or the information; and

(c) The cost of other supplies or services necessary to furnish the copy or information.

(2) The OWEB Board shall establish the agency's list of fees for inspection and copying of public records. The list of fees shall be posted on OWEB's website and shall be available on request from OWEB. The OWEB Board shall review the list of fees adopted from time to time in order to ensure that the fees reflect current actual costs.

(3) If the request appears to require services for which no fee has been established, the actual costs will be determined or estimated by OWEB, and the requester will be notified of those costs before OWEB complies with the request.

(4) OWEB may require that all or a portion of the estimated fees be paid before the public record is made available for inspection or copies provided.

(5) Payment for public record requests may be made in the form of cash, check, or money order.

Stat. Auth.: ORS 541.369, 192.430, 192.440

Stats. Implemented: ORS 192.410 - 192.505

Hist.: OWEB 1-2008, f. & cert. ef. 3-25-08

695-003-0040

Exception to Fee Charge; Fee Waivers and Reductions

(1) There is no fee for obtaining one or more copies of a public record, if providing one or more copies of that particular public record without charge is part of OWEB's programs at the time of the request, including but not limited to the public distribution of OWEB reports, news releases and public notices, and the routine provision of public records or information from public records related to grant administration or the Oregon Plan.

(2) Subject to the exception described in subsection (1), no fee waiver or reduction will be given for OWEB's actual costs in providing access for inspection or furnishing copies of public records, if those actual costs would be otherwise paid from funds dedicated to watershed protection under Article IV, Section 4b, of the Oregon Constitution, federal funding allocated by intergovernmental agreement to salmon recovery efforts, or license plate revenues statutorily dedicated to salmon recovery projects.

Stat. Auth.: ORS 541.369, 192.430, 192.440

Stats. Implemented: ORS 192.410 - 192.505

Hist.: OWEB 1-2008, f. & cert. ef. 3-25-08

Racing Commission Chapter 462

Rule Caption: Administration of certain drugs within 24 hours prior to post time.

Adm. Order No.: RC 1-2008

Filed with Sec. of State: 4-7-2008

Certified to be Effective: 4-7-08

Notice Publication Date: 3-1-2008

Rules Amended: 462-160-0110, 462-160-0120, 462-160-0130

Subject: Prohibits an animal from participating in a race if the animal was administered certain drugs within 24 hours prior to post time.

Rules Coordinator: Carol N. Morgan—(971) 673-0208

462-160-0110

Veterinary Practices

(1) Veterinarians under Authority of Commission Veterinarians:

(a) Veterinarians licensed by the commission and practicing at any location under the jurisdiction of the commission are under the authority of commission veterinarians and the stewards:

(b) The commission veterinarian(s) shall recommend to the stewards or the commission the discipline that may be imposed upon a veterinarian who violates the rules.

(2) Treatment Restrictions:

(a) Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission may administer, via injection, topical

application, inhalant, per os or per rectum, a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the commission;

(b) This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:

(A) A recognized non-injectable nutritional supplement or other substance approved by a commission veterinarian;

(B) A non-injectable substance on the direction or by prescription of a licensed veterinarian; or

(C) A non-injectable non-prescription medication or substance.

(c) No person shall possess a hypodermic needle, syringe or injectable of any kind on association grounds, unless otherwise approved by the commission. At any location under the jurisdiction of the commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the commission. If a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the commission, that person may request permission of the stewards and/or the commission in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to possess a syringe, and must comply with any conditions and restrictions set by the stewards and/or the commission;

(d) Veterinarians shall not have contact with an entered horse 24 hours prior to post time of which the horse is entered except for the administration of furosemide under the guidelines set forth in OAR 462-160-0130(5) unless approved by a commission veterinarian. Contact shall be defined as any direct or indirect physical proximity or examination;

(e) Any horse entered for racing must be present on the grounds 5-hours prior to the post time of the race they are entered in unless that horse is not entered to race with furosemide in which case that horse must be on the grounds no later than one hour prior to the post time of the race for which the horse is entered.

(3) Veterinarians' Reports:

(a) Every veterinarian who treats a racehorse at any location under the jurisdiction of the commission shall, in writing on the Medication Report Form prescribed by the commission, report to a commission veterinarian or other commission designee at the racetrack where the horse is entered to run or as otherwise specified by the commission, the name of the horse treated, any medication, drug, substance, or procedure administered or prescribed, the name of the trainer of the horse, the date and time of treatment and any other information requested by a commission veterinarian;

(b) The Medication Report Form shall be signed by the practicing veterinarian;

(c) The Medication Report Form must be filed by the treating veterinarian within 24-hours of any treatments in section (a) and not later than post time of the race for which the horse is entered. Any such report is confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of these rules or in a proceeding before the stewards or the commission, or to the trainer or owner of record at the time of treatment;

(d) A timely and accurate filing of a Medication Report Form that is consistent with the analytical results of a positive test may be used as a mitigating factor in determining the nature and extent, if any, of a rules violation.

(4) Veterinary Licenses. Any veterinarian licensed by the Oregon Racing Commission to practice veterinary medicine on a racecourse shall be prohibited from concurrently holding any other license at any location under the jurisdiction of the commission.

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

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270 & 462.415

Hist.: RC 2-2006(Temp), f. & cert. ef. 10-2-06 thru 3-21-07; RC 1-2007, f. 2-28-07, cert. ef. 3-7-07; RC 6-2007(Temp), f. & cert. ef. 11-28-07 thru 5-23-08; RC 1-2008, f. & cert. ef. 4-7-08

462-160-0120

Prohibited Practices

The following are considered prohibited practices:

(1) The possession or use of a drug, substance or medication on the premises of a facility under the jurisdiction of the commission for which a recognized analytical method has not been developed to detect and confirm the administration of such substance; or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider; or the use of which may adversely affect the integrity of racing; or,

(2) The possession or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the commission that has not

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been approved by the United States Food and Drug Administration (FDA) for any use in (human or animal) is forbidden without prior permission of the commission or its designee.

(3) The possession and/or use of blood doping agents, including but not limited to those listed below, on the premises of a facility under the jurisdiction of the commission is forbidden:

- (a) Erythropoietin;
- (b) Darbepoetin;
- (c) Oxyglobin®; and
- (d) Hemopure®.

(4) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be permitted unless the following conditions are met:

(a) Any treated horse shall not be permitted to race for a minimum of 10 days following treatment;

(b) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines shall be limited to veterinarians licensed to practice by the commission;

(c) Any Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines on the association grounds must be registered with and approved by the commission or its designee before use; and

(d) All Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy treatments must be reported to a commission veterinarian on the prescribed form not later than the time prescribed by the commission veterinarians.

(5) The use of a nasogastric tube (a tube longer than six inches) for the administration of any substance within 24-hours prior to the post time of the race in which the horse is entered is prohibited without the prior permission of a commission veterinarian.

(6) No medication may be taken into a stall where a horse is stabled unless it is intended for use on that horse. Any medication or substance that is found in a stall or on a person within a stall with a horse shall be prima facie evidence that it is intended to be administered to that horse.

(7) An animal may not participate in any race if the animal has been administered any drug that is prohibited by the commission less than 24 hours before post time.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270 & 462.415

Hist.: RC 2-2006(Temp), f. & cert. ef. 10-2-06 thru 3-21-07; RC 1-2007, f. 2-28-07, cert. ef. 3-7-07; RC 6-2007(Temp), f. & cert. ef. 11-28-07 thru 5-23-08; RC 1-2008, f. & cert. ef. 4-7-08

462-160-0130

Medications and Prohibited Substances

(1) No horse may be administered any substance, other than foods, by any route or method less than 24 hours before post time except furosemide (by the manner described in these rules) unless approved by a commission veterinarian:

(a) Any licensee of the commission, including veterinarians, found to be responsible for the improper or intentional administration of any drug resulting in a positive test may, after proper notice and hearing, be subject to the same penalties set forth for the licensed trainer;

(b) The licensed trainer is responsible for notifying the licensed owner, veterinarian or any other licensed party involved in a positive laboratory finding of any hearings and any resulting action. In addition their presence may be required at any and all hearings relative to the case;

(c) Any veterinarian found to be involved in the administration of any drug with an RCI Classification of 1, 2, or 3, involved in a prohibited practice as outlined in OAR 462-160-0120, or involved in an ORS 462 violation shall be referred to the State Licensing Board of Veterinary Medicine for consideration of further disciplinary action and/or license revocation. This is in addition to any penalties issued by the stewards or the commission;

(d) Any person who the stewards or the commission believe may have committed acts in violation of criminal statutes may be referred to the appropriate law enforcement agency. Administrative action taken by the stewards or the commission does not prohibit a prosecution for criminal acts committed, nor does a potential criminal prosecution stall administrative action by the stewards or the commission;

(e) Procedures shall be established to ensure that a licensed trainer is not able to benefit financially during the period for which the individual has been suspended. This includes, but is not limited to, ensuring that horses are not transferred to licensed family members.

(2) Medication Restrictions:

(a) A finding by the commission approved laboratory of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in

the horse's body while it was participating in a race. Prohibited substances include:

(A) Drugs or medications for which no acceptable threshold concentration has been established;

(B) Therapeutic medications in excess of established threshold concentrations;

(C) Substances present in the horse in excess of concentrations at which such substances could occur naturally; and

(D) Substances foreign to a horse at concentrations that cause interference with testing procedures.

(b) Except as otherwise provided by this chapter, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this chapter less than 24 hours before post time for the race in which the horse is entered.

(3) Medical Labeling:

(a) No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with this subsection;

(b) Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

(A) The name of the product;

(B) The name, address and telephone number of the veterinarian prescribing or dispensing the product;

(C) The name of each patient (horse) for whom the product is intended/prescribed;

(D) The dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

(E) The name of the person (trainer) to whom the product was dispensed.

(4) Non-Steroidal Anti-Inflammatory Drugs (NSAIDs):

(a) The use of one of three approved NSAIDs shall be permitted under the following conditions:

(A) The approved NSAIDs shall be authorized medication at race meets at which the average daily gross mutuel wagering during the preceding year exceeded \$150,000. If a race meet with average daily gross mutuel wagering during the preceding year of \$150,000 or less desires NSAIDs be authorized medications at their race meet they may petition the commission to approve the use of permitted NSAIDs at their race meet. The commission may approve the use of permitted NSAIDs at such race meet, if in the opinion of the commission the race meet can provide for the necessary qualified staffing, security and for the additional laboratory analysis costs and any other controls necessary to administer the program adequately. Horses on any permitted NSAID will be designated on the overnight and the daily racing program with an "M";

(B) No horse utilizing a permitted NSAID may be entered into a race unless the presence of the specific NSAID is stated on the entry form at the time of entry. Errors may be corrected up until scratch time. If no scratch time is used, the stewards may designate a time until which errors may be corrected;

(C) Not to exceed the following permitted serum or plasma threshold concentrations which are consistent with administration by a single intravenous injection not less than 24 hours before the post time for the race in which the horse is entered:

(i) Phenylbutazone (or its metabolite oxyphenylbutazone) — 5 micrograms per milliliter;

(ii) Flunixin — 25 nanograms per milliliter;

(iii) Ketoprofen — 10 nanograms per milliliter.

(D) These or any other NSAID are prohibited to be administered within the 24-hours before post time for the race in which the horse is entered;

(E) A test sample with a phenylbutazone to oxyphenylbutazone ratio of greater than 3:1 shall be a presumption of administration less than 24 hours before scheduled post time;

(F) The presence of more than one of the three approved NSAIDs in urine or any unapproved NSAID in the post-race serum, plasma or urine sample is not permitted. The use of all but one of the approved NSAIDs

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shall be discontinued at the close of entries for the day in which the horse is entered.

(b) Any horse to which an NSAID has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of a commission veterinarian to determine the quantitative NSAID level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s);

(c) When listed to race on a permitted NSAID, the approved laboratory must be able to detect the presence of a permitted NSAID in serum, plasma or urine by the routine methods of detection;

(d) If a permitted NSAID is detected in the urine or in any other specimen taken from a horse not stated to have permitted medication in its system on the entry form and/or program, the violation will result in a penalty to the horse's trainer and may result in loss of purse;

(e) If the same horse has three (3) overages of any permitted NSAID during a 365 day period a commission veterinarian shall rule the horse off all NSAIDs for a period of one year (365 days);

(f) The decision of whether to scratch a horse which has been entered incorrectly or is incorrectly treated shall be left to the discretion of a commission veterinarian.

(5) Furosemide:

(a) The commission may approve the use of furosemide at any race meet, if in the opinion of the commission the race meet can provide the necessary qualified staffing, security and for the additional laboratory analysis costs and any other controls necessary to administer a furosemide program;

(b) Furosemide may be administered intravenously to a horse, which is entered to compete in a race. Except under the instructions of a commission veterinarian or the racing veterinarian for the purpose of removing a horse from the Veterinarian's List or to facilitate the collection of a post-race urine sample, furosemide shall be permitted only after a commission veterinarian has placed the horse on the Furosemide List. In order for a horse to be placed on the Furosemide List the following process must be followed:

(A) After the horse's licensed trainer and licensed veterinarian determine that it would be in the horse's best interests to race with furosemide, they shall notify a commission veterinarian, using the prescribed form, that they wish the horse to be put on the Furosemide List;

(B) The form must be received by a commission veterinarian by the proper time deadlines so as to ensure public notification;

(C) A horse placed on the official Furosemide List must remain on that list unless the licensed trainer and licensed veterinarian submit a written request to remove the horse from the list. The request must be made to a commission veterinarian, on the proper form, no later than the time of entry;

(D) After a horse has been removed from the Furosemide List, the horse may not be placed back on the list for a period of 60 calendar days unless it is determined to be detrimental to the welfare of the horse, in consultation with a commission veterinarian. If a horse is removed from the official Furosemide List a second time in a 365-day period, the horse may not be placed back on the list for a period of 90 calendar days;

(E) Furosemide shall only be administered on association grounds;

(F) Upon the request of the regulatory agency designee, the veterinarian administering the authorized bleeder medication shall surrender the syringe used to administer such medication which may then be submitted for testing.

(c) Horses to run with furosemide must be so noted on the entry form at the time of entry. Errors may be corrected up until scratch time. If no scratch time is used, the stewards may designate a time until which errors may be corrected:

(A) Horses entered to race with furosemide will be designated on the overnight and the daily racing program with a "Lasix®" or "L". If the race is the first race the horse is to run in on furosemide, it shall be designated in the daily racing program with a "1-L". If the race is the first race the horse runs without furosemide after running one or more races with furosemide it shall be designated in the program by "O-L" or "L-X";

(B) When discovered prior to the race, errors in the listing of furosemide treatments in the program shall be announced to the public.

(d) The use of furosemide shall be permitted under the following circumstances:

(A) Furosemide shall be administered no more than five hours but not less than four hours prior to the scheduled post time for the race for which the horse is entered;

(B) The furosemide dosage administered shall not exceed 500 mg. nor be less than 150 mg;

(C) Furosemide shall be administered by a single, intravenous injection;

(D) The trainer of the treated horse shall cause to be delivered to a commission veterinarian no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the commission:

(i) The name of the horse, racetrack name, the date and time the furosemide was administered to the entered horse;

(ii) The dosage amount of furosemide administered to the entered horse; and

(iii) The printed name and signature of the attending licensed veterinarian who administered the furosemide;

(iv) Violations of this subsection (subsection (d)) shall result in a fine and scratch from the race the horse was entered to run. Violations may also result in a commission veterinarian ordering the loss of furosemide privileges.

(e) Test results must show a detectable concentration of the drug in the post-race serum, plasma or urine sample. If furosemide is not detected in a post-race sample, a penalty may be imposed upon the horse's trainer without loss of purse:

(A) The specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. The specific gravity shall not be below 1.010. If the specific gravity of the urine is found to be below 1.010 or if a urine sample is unavailable for testing, quantitation of furosemide in serum or plasma shall be performed;

(B) Quantitation of furosemide in serum or plasma shall be performed when the specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

(f) Unauthorized use of furosemide shall result in a penalty to the horse's trainer;

(g) The decision of whether to scratch a horse which has been entered incorrectly or is incorrectly treated shall be left to the discretion of a commission veterinarian;

(h) A commission veterinarian may rule a horse off furosemide if in his/her opinion it is in the horse's best interest, the interest of the citizens of the state or the best interest of horse racing.

(6) Bleeder List:

(a) The commission veterinarians shall maintain a Bleeder List of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by a commission veterinarian;

(b) Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List and be ineligible to enter for the following time periods:

(A) First incident — 14 days;

(B) Second incident within 365 day period — 30 days;

(C) Third incident within 365 day period — 180 days;

(D) Fourth incident within 365-day period -- barred for racing lifetime.

(c) For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period;

(d) The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined by this policy;

(e) A horse may be removed from the Bleeder List only upon the direction of a commission veterinarian, who shall certify in writing to the stewards the recommendation for removal;

(f) A horse which has been placed on a Bleeder List in another jurisdiction pursuant to these rules shall be placed on a Bleeder List in this jurisdiction.

(7) Anti-Ulcer Medications. The following anti-ulcer medications are permitted to be administered, at the stated dosage, up to 24 hours prior to the race in which the horse is entered:

(a) Cimetidine — 8-20 mg/kg PO BID-TID; and

(b) Omeprazole — 2.2 grams PO SID.

(8) Environmental Contaminants and Substances of Human Use:

(a) The following substances can be environmental contaminants in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination during the cultivation, processing, treatment, storage or transportation phases;

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(b) The following drugs are recognized as substances of human use and addiction and which could be found in the horse due to its close association with humans;

(c) Regulatory thresholds have been set for the following substances: Caffeine — 100 nanograms of caffeine per milliliter of serum or plasma;

(d) If the preponderance of evidence presented in the hearing shows that a positive test is the result of environmental contamination or inadvertent exposure due to human drug use it should be considered as a mitigating factor in any disciplinary action taken against the affected trainer.

(9) Dimethylsulfoxide (DMSO): The use of DMSO shall be permitted under the following conditions:

(a) It is only administered as an external topical application;

(b) A test sample shall not exceed 10 micrograms / ml. in serum of DMSO or its analogs.

Stat. Auth.: ORS 462.270(3)

Stats. Implemented: ORS 462.270 & 462.415

Hist.: RC 2-2006(Temp), f. & cert. ef. 10-2-06 thru 3-21-07; RC 1-2007, f. 2-28-07, cert. ef. 3-7-07; RC 6-2007(Temp), f. & cert. ef. 11-28-07 thru 5-23-08; RC 1-2008, f. & cert. ef. 4-7-08

Secretary of State, Corporation Division Chapter 160

Rule Caption: Business registry copy and data extract fees.

Adm. Order No.: CORP 2-2008

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 5-1-08

Notice Publication Date: 3-1-2008

Rules Adopted: 160-005-0007

Rules Amended: 160-005-0005, 160-005-0010

Subject: This rule updates and clarifies fees for certain copy and data extracts of business registry records. It adds two new copy types: paper copies of inactive records, and a decorative certificate memorializing the incorporation of an entity.

Rules Coordinator: Tom Wrosch—(503) 986-2371

160-005-0005

Fees For Business Registry Public Records

(1) Definition

(a) "Document File" A document file includes:

(A) Documents initially filed for corporations, limited partnerships, limited liability companies, limited liability partnerships, business trusts, and trade and service marks; and

(B) Supplementary documents for corporations, limited partnerships, limited liability companies, limited liability partnerships, business trusts, and trade and service marks; and

(C) Assumed Business Name applications, amendments, withdrawals, cancellations, and renewals.

(b) "Single Documents" Examples of single documents include:

(A) Annual Reports;

(B) Change of Registered Agent.

(2) Certified paper copies of a document file — \$15 per file

(3) Regular paper copies of a document file — \$5 per file

(4) Certified paper copies of single documents — \$15 per document

(5) Regular paper copies of single documents — \$5 per document

(6) Regular paper copies of a document at the time of filing — \$5

(7) Certificate of Existence — \$10

(8) Certificate of Record — \$10

(9) Certificate of No Record — \$10

(10) Regular paper copies of inactive corporate records — \$10

(11) Decorative Certificate of Incorporation/Organization/Registration — \$20

Stat. Auth.: ORS 56, 58, 60, 62, 63, 65, 68, 70, 128, 183, 192, 554, 647 & 648

Stats. Implemented: ORS 56, 140

Hist.: CC 9-1985(Temp), f. & ef. 9-25-85; CC 4-1986, f. & ef. 1-6-86; Renumbered from 815-010-0004, CC 2-1988, f. 9-28-88, cert. ef. 10-3-88; CORP 1-1991, f. & cert. ef. 1-22-91, Renumbered from 160-001-0010; CORP 2-1991, f. 6-21-91, cert. ef. 7-1-91; CORP 1-1992, f. & cert. ef. 3-18-92; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94; CORP 1-1994, f. 12-30-94, cert. ef. 1-1-95; CORP 4-1995, f. 12-5-95, cert. ef. 12-6-95; CORP 2-2008, f. 4-15-08, cert. ef. 5-1-08

160-005-0007

Fees For Business Registry Special Services

(1) Customized Searches: Business Registry (.txt format)

(a) Standard Search Requests

(A) Associated Person Name Search — \$10 per name

(B) City Search — \$10 per city

(C) Zip Code Search — \$10 per zip code

(D) Entity Type Search — \$50 per search

(b) Special Search request — \$150 per search

(Customer supplied list of conditions. A condition may be any combination of data elements stored in the database such as city, entity type, status, date range, associated name type, etc.)

(2) Standard Information Sets: Business Registry

(a) Entire Database extract (.txt format) — \$500 per file

(b) Monthly New Business List (.txt format) — \$50 per file

(c) Trade and Service mark registrations by date range \$25 per search

(d) Trade and Service Mark registrations — \$100 per file

(Monthly CD images w/entire database index)

(3) Research Fees for Business Registry programs

The fees for research service shall be — \$50 per hour. Based on actual costs incurred (amounts of less than one-hour charged in -hour increments)

Stat. Auth.: ORS 56, ORS 58, ORS 60, ORS 62, ORS 63, ORS 65, ORS 68, ORS 70, ORS 128, ORS 183, ORS 192, ORS 554, ORS 647 & ORS 648

Stats. Implemented: ORS 68, ORS 56, 140, 675 & ORS 647, 009

Hist.: CORP 2-2008, f. 4-15-08, cert. ef. 5-1-08

160-005-0010

Refund of Monies

(1) This rule, pursuant to ORS 293.445, provides for the refund of fees paid in excess of the amount legally due to the Corporation Division.

(2) The Secretary of State shall not refund fees paid in excess of the amount legally due to the Division if the amount is \$10 or less, unless a refund is requested by the applicant or the applicant's legal representative. However, the Secretary of State shall not make refunds unless the request is received within three years after the date payment is received by the Division.

Stat. Auth.: ORS 56, 58, 60, 62, 63, 65, 68, 70, 79, 80, 87, 128, 183, 194, 293, 554, 647 & 648

Stats. Implemented: ORS 56, 140

Hist.: CC 15, f. 1-11-74, ef. 2-11-74; CC 6-1985, f. & ef. 5-3-85; Renumbered from 815-010-0001, CC 2-1988, f. 9-28-88, cert. ef. 10-3-88; CORP 1-1991, f. & cert. ef. 1-22-91, Renumbered from 160-001-0015; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94; CORP 4-1995, f. 12-5-95, cert. ef. 12-6-95; CORP 2-2008, f. 4-15-08, cert. ef. 5-1-08

Rule Caption: Revise rule on journal ID documentation to comply with Senate Bill 583 (2007).

Adm. Order No.: CORP 3-2008

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 5-1-08

Notice Publication Date: 4-1-2008

Rules Amended: 160-100-0210

Subject: Notaries public do not enter an ID number in their journals anymore when relying on documentation for satisfactory evidence of identify. Instead, this rule requires noting the organization, type of ID and the expiration date.

Rules Coordinator: Tom Wrosch—(503) 986-2371

160-100-0210

Information Required to Be Recorded in Notarial Journal

Except as provided in OAR 160-100-0220 and 160-100-0230, a notary public shall record in a notarial journal the following information about each notarial act performed by the notary public:

(1) The date and time the notarial act was performed;

(2) The type of notarial act performed;

(3) The date of the document notarized;

(4) The type of document notarized;

(5) The printed name of the person whose statement, signature or document was notarized;

(6) The signature of the person whose statement, signature or document was notarized.

(7) A description of how the notary public identified the person whose statement, signature or document was notarized. The description shall be as follows:

(a) If the notary public identified such person by personally knowing the person, then the description shall consist of the statements either "personally known" or "personal knowledge";

(b) If the notary public identified such person by seeing and hearing a credible witness personally known to the notary public testify under oath or affirmation, then the description shall consist of, in the following order, the legal name and residence street address of the witness;

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(c) If the notary public identified such person by seeing identification documents, then the description shall consist of, in the following order, the name of the organization that issued the document; the type of document and the document's expiration date. For example, State of Oregon Driver License 8-8-2008.

(8) An entry may contain any other information.
Stat. Auth.: ORS 194.152
Stats. Implemented: ORS 194.152
Hist.: SOS-AD 2-1990, f. 5-9-90, cert. ef. 7-1-90; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94, Renumbered from 164-100-0210; CORP 3-2008, f. 4-15-08, cert. ef. 5-1-08

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

Rule Caption: Adopts Division 100 Implementing the Procedure to be Appointed to the Public Officials Compensation Commission.

Adm. Order No.: ELECT 4-2008(Temp)

Filed with Sec. of State: 4-1-2008

Certified to be Effective: 4-1-08 thru 9-28-08

Notice Publication Date:

Rules Adopted: 165-100-0000, 165-100-0005, 165-100-0010, 165-100-0015, 165-100-0020, 165-100-0025, 165-100-0030

Subject: These rules set forth the procedures for the selection and notification by the Secretary of State, of electors to be appointed to the Public Officials Compensation Commission as provided in ORS 292.908.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-100-0000

Statement of Purpose

The purpose of this division is to provide uniform procedures for the selection and notification by the Secretary of State ("Secretary") of electors to be appointed to the Public Officials Compensation Commission ("Commission") as provided for in ORS 292.908.

Stat. Auth.: ORS 292.908
Stats. Implemented: ORS 292.907, 292.908
Hist.: ELECT 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

165-100-0005

Conducting the Selection of Names by Lot

No later than May 20 of the year of selection, the Secretary shall arrange for the random selection of 100 names of electors from each congressional district that requires appointment of a new commissioner, or from the statewide registration roll for the at large position. The Secretary may employ an electronic data processing system or device to make the random selection of electors as required by this section. The list compiled shall form the pool of prospective candidates for appointment to the Commission under ORS 292.908.

Stat. Auth.: ORS 292.908
Stats. Implemented: ORS 292.907, 292.908
Hist.: ELECT 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

165-100-0010

Notifying Persons Selected by Lot

(1) No later than May 31 of the year of selection, the Secretary shall notify by nonforwardable 1st class mail each prospective candidate selected under OAR 165-100-0010. The notification shall contain a response form and prestamped, self-addressed return envelope.

(a) The notification shall include the statutory qualifications for membership on the Commission as specified in ORS 290.907-290.930 and describe the duties of the position under ORS 290.907-290.930.

(b) The notification shall instruct the prospective candidate to certify on the form whether the prospective candidate satisfies the statutory qualifications to serve on the Commission and indicate whether the prospective candidate is willing to serve on the Commission if selected to serve.

(c) The prospective candidate shall be instructed to return the form no later than June 10 of that year.

(d) A prospective candidate, by appropriate indication on the form, may decline to serve on the Commission. The Secretary shall take as conclusive indication that the prospective candidate has declined to serve if the form is not received by the Secretary on or before June 10 of that year. The notification shall include an appropriate notice of this deadline.

(2) The Secretary shall compile a list by open position of each qualified prospective candidate who has timely returned the notification form, and on the form has certified that the prospective candidate satisfies the

specified qualifications described in ORS 290.907 and is willing to serve on the Commission.

Stat. Auth.: ORS 292.908
Stats. Implemented: ORS 292.907, 292.908
Hist.: ELECT 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

165-100-0015

Selecting Candidates for Appointment by Lot

(1) From the list prepared under OAR 165-100-0020(2), the Secretary shall conduct a separate, manual selection at random of all qualified prospective candidates for each open position.

(2) This list shall serve as the list of available candidates for the initial appointment and for filling any vacancy occurring during the term of office for which the initial appointment was made.

Stat. Auth.: ORS 292.908
Stats. Implemented: ORS 292.907, 292.908
Hist.: ELECT 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

165-100-0020

Term of Appointment

(1) The term of office of each member is four years. A member is eligible for reappointment or reselection.

(2) The term of office for the members first appointed on or after the effective date of Oregon Laws 2007, chapter 901, will begin on July 1, 2008.

(3) Notwithstanding the term of office specified in subsection (1) of this section, the term of office for the members first appointed on or after the effective date of Oregon Laws 2007, chapter 901 will expire on the dates set forth in Oregon Laws 2007, chapter 901, section 4.

Stat. Auth.: ORS 292.908
Stats. Implemented: ORS 292.907, 292.908
Hist.: ELECT 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

165-100-0025

Appointment to Commission

(1) No later than July 1 of the year of selection, for each open position to which ORS 292.908 applies, the Secretary shall forward to the Commission the name of the first available candidate selected under OAR 165-100-0030 for appointment to the Commission.

(2) In the event that a candidate whose name has been forwarded to the Commission for appointment to the Commission declines the appointment, the Commission shall promptly inform the Secretary, who shall forward to the Commission the name of the next available candidate eligible for appointment to the open position from the list compiled under OAR 165-100-0020.

Stat. Auth.: ORS 292.908
Stats. Implemented: ORS 292.907, 292.908
Hist.: ELECT 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

165-100-0030

Vacancy on Commission

(1) Whenever a vacancy occurs in any of the positions to which ORS 292.908 applies, the Commission shall promptly notify the Secretary of the vacancy. The Secretary shall forward to the Commission for appointment the name of the next available candidate on the list created in OAR 165-100-0030 or that position. This procedure will be repeated until this list is exhausted.

(2) If the list for a position to which ORS 292.908 applies is exhausted, the Secretary shall create a new list for that position using the most recent voter information available on the Oregon Centralized Voter Registration system. Except for the revision of timelines under this section, the process for compiling the data file of records of electors by congressional district, conducting the selection by lot, notifying electors selected, determining appointees, and forwarding to the Commission the certified list of the name of the elector selected shall be substantially the same as specified in OAR 165-100-0010 through 165-100-0040.

Stat. Auth.: ORS 292.908
Stats. Implemented: ORS 292.907-292.930
Hist.: ELECT 4-2008(Temp), f. & cert. ef. 4-1-08 thru 9-28-08

**Teacher Standards and Practices Commission
Chapter 584**

Rule Caption: Adopt, amend and repeal rules regarding Program Approval, Emergency licenses and general housekeeping issues.

Adm. Order No.: TSPC 2-2008

Filed with Sec. of State: 4-15-2008

Certified to be Effective: 4-15-08

Notice Publication Date: 12-1-2007

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Rules Adopted: 584-010-0006

Rules Amended: 584-005-0005, 584-010-0010, 584-010-0015, 584-010-0020, 584-010-0025, 584-010-0030, 584-010-0035, 584-010-0045, 584-010-0050, 584-010-0055, 584-010-0060, 584-010-0080, 584-010-0090, 584-010-0100, 584-010-0140, 584-017-0175, 584-017-0355, 584-036-0067, 584-038-0004, 584-044-0011, 584-044-0015, 584-044-0023, 584-046-0020, 584-046-0024, 584-048-0105, 584-052-0015, 584-060-0002, 584-060-0012, 584-060-0014, 584-060-0052, 584-060-0210, 584-065-0070, 584-065-0080, 584-070-0132

Rules Repealed: 584-010-0040, 584-010-0065, 584-010-0070, 584-010-0120, 584-010-0130, 584-017-0350, 584-017-0442, 584-017-0452, 584-070-0320

Rules Ren. & Amend: 584-017-0001 to 584-010-0001, 584-010-0130 to 584-017-0201

Subject: 1. Adopts Program Approval Rules regarding purpose, definitions and substitute licensure without completion of all licensure requirements.

2. Amends Program Approval rules for licensure programs doing business in the State of Oregon.

3. Amends rules governing Preconditions of Program Approval, on-site reviews, program modifications including major modifications and annual reports.

4. Amends Review of Not Previously Approved Programs, Denial of Program Approval, Appeals, Fast Track Field Audits, Program Completion reports, and Three and Six year reports.

5. Clarifies programs that require academic preparation and dual authorization elimination for some authorizations.

6. Makes substantive changes to Emergency Teaching and Emergency Counselor licenses.

7. Removes references to obsolete rules and other housekeeping issues.

8. Repeals outdated rules.

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) "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.

(3) "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.)

(4) "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.

(5) "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.)

(6) "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.

(7) "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.

(8) "Assistant Superintendent:" A superintendent's immediate subordinate who evaluates licensed personnel. May also be designated Deputy or Associate Superintendent.

(9) "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)

(10) "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.

(11) "Commission:" Teacher Standards and Practices Commission (TSPC).

(12) "Competencies:" Ability to apply knowledge and skills appropriately and effectively in achieving the expected outcomes.

(13) "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.

(14) "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.)

(15) "Consortium:" An advisory body to the institution in reviewing, evaluating, and making recommendations on the design, implementation, evaluation, and modification of the program.

(16) "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.

(17) "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.

(18) "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.)

(19) "Education Service District (ESD):" A district created under ORS 334.010 that provides regional educational services to component school districts.

(20) "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.

(21) "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.

(22) "Endorsement:" The subject matter or specialty education field or grade authorization in which the individual is licensed to teach.

(23) "Executive Director:" The Executive Director of the Commission. (See ORS 342.410.)

(24) "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.

(25) "Field Experience:" Learning activities designed to develop professional competence through observing, assisting, or teaching in a public or approved non-public school.

(26) "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.

(27) "Instructional Faculty:" Full-time and part-time faculty who teach professional courses and/or supervise field-centered activities and student teachers.

(28) "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.

(29) "Joint Application:" Submitted by the school district in cooperation with the applicant.

(30) "Liaison Officer:" The person designated by the unit to submit all program modifications for TSPC approval, issue all recommendations

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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.

(31) "Major Modifications:" Changes of program philosophy, curricula, practica, resources, personnel, or performance standards.

(32) "Major Traffic Violation:" Includes driving while under the influence of intoxicants (ORS 487.540); reckless driving (ORS 487.550); fleeing or attempting to elude a police officer (ORS 487.555); driving while license is suspended or revoked or beyond license restrictions (ORS 487.560); or failure to perform the duties of a driver or witness at an accident (ORS 483.602).

(33) "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.

(34) "Misassignment:" See definition of "Conditional Assignment" above.

(35) "National Board For Professional Teaching Standards (NBPTS):" A professional board established to award a National Teaching Certificate to qualified educators.

(36) "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.

(37) "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.

(38) "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.

(39) "Personnel Service:" A type of license issued to counselors, supervisors, and school psychologists.

(40) "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.

(41) "PRAXIS:" A series of professional assessments for beginning educators produced and administered by Educational Testing Service (ETS) and adopted by TSPC as licensure examinations.

(42) "Principal:" The administrator of each school building or buildings as designated by the school district board.

(43) "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.

(44) "Professional Development Plan:" A plan for personal professional growth during the next licensure renewal cycle.

(45) "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.)

(46) "Program Administrator:" Managers of school programs and coordinators of district-wide programs that are accountable at the building level.

(47) "Program Review Committee:" Committee appointed by the Commission to conduct an on-site review for purposes of approval of an educator preparation program.

(48) "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).)

(49) "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.

(50) "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.

(51) "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.

(52) "Reinstatement:" Restoration of the validity of a license which has expired, been suspended, or been revoked. (See OAR 584-050-0015.)

(53) "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.)

(54) "School:" A single school building or combination of buildings which the school board designates as a school.

(55) "School Administrator:" The principal, vice principals and assistant principals at each school.

(56) "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.

(57) "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.

(58) "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.

(59) "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.)

(60) "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.)

(61) "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.)

(62) "Self-Contained Classroom:" An assignment for teaching in grades preprimary through nine in which the teacher has primary responsibility for the curriculum.

(63) "Skills:" Ability to use knowledge effectively in the performance of specific tasks typical of those required in an educational position.

(64) "State Board:" The Oregon State Board of Education.

(65) "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.

(66) "Successful Experience:" If the educator was permitted to fulfill the contract with the district, the experience is deemed successful.

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(67) "Superintendent:" The district's chief administrator who reports directly to the school board.

(68) "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.

(69) "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.

(70) "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.

(71) "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.

(72) "TSPC:" Teacher Standards and Practices Commission.

(73) "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.

(74) "Vice Principal:" A principal's immediate subordinate assigned to coordination of instruction, discipline, student activities, or supervision or evaluation of staff.

(75) "Violation of Licensure:" Employment by a public school of a teacher or school nurse without a valid license or Conditional Assignment Permit. See definition of Conditional Assignment

(76) "Work Samples:" A designed and implemented unit of study that demonstrates capacity to foster student learning.

(77) "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

584-010-0001

Purpose of Program Approval

(1) The Oregon Legislative Assembly has delegated to the Teacher Standards and Practices Commission the authority to establish standards for approval of educator preparation programs through Oregon Revised Statutes 342.147 and 342.165.

(2) In 1987, the Teacher Standards and Practices Commission established the first standards for approval of college and university preparation programs based on competence of prospective educators rather than prescribed courses.

(3) In 1997, the Commission revised standards to reflect changes in education and to focus preparation on the competence of candidates.

(4) The Commission's standards emphasize qualitative rather than quantitative aspects of units and programs.

(5) The standards for program approval are contained in Division 17 of these administrative rules. Titles and rule numbers for standards for program approval are printed in bold type. Indicators of compliance are listed below each standard in outline form.

(6) Units must meet all standards to receive unconditional approval for a program pursuant to OAR 584-010-0025 Recommendations Following On-Site Review.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 6-2002, f. & cert. ef. 10-23-02; Renumbered from 584-017-0001, TSPC 2-2008, f. & cert. ef. 4-15-08

584-010-0006

Definitions

(1) "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" at OAR 584-005-0005.

(2) "Approved Program:" An Oregon program of educator preparation approved by the Commission 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.

(3) "Branch Campus:" Include but are not limited to:

(a) Off-campus programs in the same state; or

(b) Off-campus programs offered at sites outside of the state or in another country.

(c) Branch campuses must be included in the unit's review if the:

(A) Programs are limited in number and size;

(B) Programs are located in close proximity to the parent campus; or

(C) Program completers are eligible for licensure in Oregon.

(4) "Candidate:" Candidates include persons preparing to teach, teachers who are continuing their professional development and persons preparing for other professional roles in schools such as administrators, school counselors and school psychologists.

(5) "Commission:" Teacher Standards and Practices Commission (TSPC).

(6) "Consortium:" An advisory body to the unit that reviews, evaluates, and makes recommendations on the design, implementation, evaluation, and modification of the unit's programs.

(7) "Coordinator of Teacher Education:" The Commission staff member responsible for coordinating program approval within the agency.

(8) "Executive Director:" The Executive Director of the Commission.

(9) "Liaison Officer:" The person designated by the unit to submit all program modifications for Commission 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 Commission staff and the unit.

(10) "Practicum or Practica:" All supervised clinical field experiences including student teaching, internships, observation experiences and experience necessary to add an endorsement.

(11) "Program:" Program includes but is not limited to an academic program designed for one of the following outcomes: Add an endorsement, grade level authorization or result in a new licensure area such as an Initial or Continuing License in teaching, administration or personnel service.

(12) "Program Review Committee:" Committee appointed by the Commission to conduct an on-site review for purposes of approval of an educator preparation program.

(13) "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.

(14) "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.

(15) "Unit:" The professional education unit defined by the college or university's administrative body as having the primary responsibility for the preparation of licensed school personnel. The unit coordinates all professional education programs for the initial and continuing preparation of school personnel even though some programs may be located in other college or university administrative units.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 2-2008, f. & cert. ef. 4-15-08

584-010-0010

Program Approval for Teachers, Administrators, and Personnel Service Specialists

(1) Commission rules for program approval apply to all educator licensure programs doing business in the state of Oregon. The rules in effect at the time of a unit site visit shall be the rules upon which the unit is evaluated.

(2) Units providing off-campus programs administered by the unit with instruction provided at sites other than the main campus will have the

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off-site programs evaluated as part of the institution's professional education unit.

(a) Off campus programs include programs taught on weekends or nights that may be delivered through technology in another city;

(b) Off campus program means a program that is not located on the campus where the administrative offices of the unit are located. [See definition of "Branch Campus" in OAR 584-010-0006 above.]

(3) Unless otherwise stipulated, Commission approval of a program shall expire on August 31 of the final year of the approved period.

(a) It is the unit's responsibility to apply for renewal or a Commission-approved extension in advance of the expiration of the program approval period.

(b) Units undergoing an NCATE visit and a state visit at the same time will coordinate their joint NCATE and state visit with the TSPC Coordinator of Teacher Education. The state reserves the right to deny approval of the NCATE visit date if the date conflicts with previously scheduled obligations.

(4) The Commission shall determine compliance with the standards on the basis of:

(a) Information submitted by the unit;

(b) The findings and recommendations of the program review committee;

(c) The results of staff audits of selected elements of the program conducted pursuant to OAR 584-010-0090; and

(d) The performance of candidates for licensure.

(5) In addition to annual reports, periodic reports may be required from the unit upon evidence that the program, institution or unit has undergone major modifications as defined in OAR 584-010-0006 and 584-010-0045.

(a) An interim visit may only occur after the unit has had an opportunity to present evidence the program has not undergone unapproved major modifications as defined in OAR 584-010-0045 and only after a full vote of the Commission.

(6) Units receive program approval for a period of five or seven years. At the end of the approved period, or any lesser period as designated by the Commission, the Commission will re-evaluate the program through the program approval process and in accordance with the rules adopted in divisions 10 and 17 of these administrative rules.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.147

Hist.: TS 14, f. 12-20-76, ef. 1-1-77; TS 16, f. 12-19-77, ef. 1-1-78; TS 5-1980, f. & ef. 9-11-80; TS 5-1986, f. 7-31-86, ef. 9-1-87; TS 1-1991, f. & cert. ef. 1-2-91; TS 1-1992, f. & cert. ef. 1-15-92; TS 7-1992, f. 12-17-92, cert. ef. 1-15-93; TS 5-1993, f. & cert. ef. 10-7-93; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 3-2005(Temp), f. & cert. ef. 4-15-05 thru 9-30-05; TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 2-2008, f. & cert. ef. 4-15-08

584-010-0015

Preconditions for Program Approval

(1) Prior to program approval a unit must satisfy the preconditions set forth below. Once the Commission has reviewed these preconditions, the Commission shall determine by resolution in a public meeting whether the preconditions have been met and whether the unit is eligible to apply for approval to deliver a licensure program in teaching, administration, school counseling or school psychology.

(2) Programs from units or institutions that have never been approved by the Commission must satisfy the following preconditions prior to submitting a proposal for approval to deliver a licensure program:

(a) A college or university seeking unit recognition for program approval must obtain full regional accreditation from the Northwest Commission on Colleges and Universities or another appropriate institutional regional accrediting agency recognized by the U.S. Department of Education;

(b) Approval by the Oregon Office of Degree Authorization, and if an Oregon state institution, by the State Board of Higher Education;

(c) A letter from the institution's administrative body recognizing and identifying the professional educational unit as having responsibility and authority for the preparation of licensed educators;

(d) Evidence that a dean, director or chair has been officially designated as head of the unit and is assigned the authority and responsibility for its overall administration and operation;

(e) Written policies and procedures that will guide the operations of the unit, including but not limited to: student handbooks; procedures on admission; program waivers; and student appeal rights;

(f) The unit's conceptual framework that establishes the shared vision for a unit's efforts in preparing educators to work in prekindergarten-12 schools and provides direction for programs, courses, teaching, candidate performance, scholarship, leadership, service and unit accountability;

(g) Evidence that the unit regularly monitors and evaluates its operations, the quality of its offerings, the performance of its candidates, and the effectiveness of its graduates; and

(h) Evidence the unit has published criteria for admission to and exit from all initial teacher preparation and advanced programs and can provide summary reports of candidate performance at exit from the program.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.147 & 342.165

Hist.: TS 14, f. 12-20-76, ef. 1-1-77; TS 3-1988, f. & cert. ef. 4-7-88; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 2-2008, f. & cert. ef. 4-15-08

584-010-0020

Procedure for On-Site Review of Licensure Programs

(1) Pre-visit Reports: (a) Units scheduled for a state on-site program review visit will provide a pre-visit report containing the documentation outlined in subsections (a) and (b) below to the Commission at least 60 days in advance of the on-site visit.

(b) Units scheduled for a joint NCATE and state on-site program review will provide a pre-visit report containing the documentation outlined in subsections (a) and (b) below to the Commission at the same time the unit provides the Conceptual Framework to NCATE:

(A) Information about all educational licensure preparation programs; and

(B) Evidence of compliance with program standards, including but not limited to data demonstrating evidence of candidate:

(i) Content knowledge;

(ii) Clinical field experience;

(iii) Competency; and

(iv) Follow-up after program completion.

(2) Commission Staff Responsibility: At least 120 days prior to the scheduled on-site visit, the Commission staff will:

(a) Furnish the unit with copies of applicable rules, policies and procedures;

(b) Appoint a program review committee. Every attempt will be made to include representatives from a broad sector of educators including teachers, administrators and teacher educators;

(c) Set the dates for the visit; and

(d) Appoint a chair of the program review committee, if other than the Coordinator of Teacher Education, who works with the unit, and is responsible for program review committee assignments and completing the written program review report.

(3) Program Review Committee Responsibilities Prior to the On-Site Visit: (a) Prior to the visit the program review committee will review:

(A) The unit's annual reports; and

(B) The pre-visit report.

(b) The committee chair will:

(A) Review the exhibits on site;

(B) Complete a pre-visit audit; and

(C) Inform the unit of any additional information needed to complete the visit.

(4) Program Review Committee Responsibilities During the On-Site Visit: During the on-site visit, the program review committee will:

(a) Conduct an on-site visit;

(b) Reach consensus about whether the evidence supporting the program elements meets Commission standards; and

(c) Conduct an exit review with the unit.

(5) Committee Chair Responsibilities: Following the on-site visit the program review committee chair will:

(a) Ensure completion of the written report based on the findings of the committee members;

(b) Circulate a draft of the report to program review committee members for their review and input;

(c) Send a draft of the final report to the unit head for review and response; and

(d) Consult with the Executive Director regarding recommendations to the Commission pursuant to OAR 584-017-0025.

(6) The Final Report: The final report shall:

(a) Cite evidence showing compliance with or deviation from each standard that applies to the unit's programs; and

(b) Contain a list of contacts that were made and exhibits that were reviewed; and

(c) Be sent to the unit head and the chief executive officer of the institution along with the Executive Director's recommendations prior to the Commission meeting at which the report will be considered.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.147

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Hist.: TS 14, f. 12-20-76, ef. 1-1-77; TS 16, f. 12-19-77, ef. 1-1-78; TS 3-1984, f. & ef. 8-3-84; TS 1-1987, f. & ef. 3-3-87; TS 1-1991, f. & cert. ef. 1-2-91; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 2-2008, f. & cert. ef. 4-15-08

584-010-0025

Recommendations Following On-Site Review

(1) The Executive Director will consider all the elements outlined in OAR 584-010-0010(4) and make recommendations to the Commission at the meeting following completion of the report.

(2) The Executive Director may prepare resolutions proposing:

(a) Unconditional approval;

(b) Approval on conditions that the unit makes a report on a specific date indicating progress on correcting deficiencies; or

(c) Non-approval with conditions.

(3) The Executive Director will submit the proposed recommendations and resolutions to the unit prior to the Commission meeting at which the site-visit report will be considered.

(a) When the program review committee's report finds there are unmet standards, the unit may propose solutions to the director prior to the Commission meeting at which the report will be considered.

(b) The director may make recommendations to the Commission based upon the unit's plan to correct unmet standards.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.147 & 342.165

Hist.: TS 14, f. 12-20-76, ef. 1-1-77; TS 3-1984, f. & ef. 8-3-84; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 2-2008, f. & cert. ef. 4-15-08

584-010-0030

Commission Action Following On-Site Review

(1) The Commission shall act on the Executive Director's proposed recommendations and resolutions within 90 days by:

(a) Approving the program for a period not to exceed five or seven years; or

(b) Conditionally approving the program for a period not to exceed five years and requiring the unit to submit progress reports on identified conditions requiring correction or improvement. The Commission may schedule additional on-site visits to the unit in order to verify progress reports; or

(c) Denying program approval.

(2) If the Commission denies program approval, the Commission may grant limited continuance of identified endorsements or grant sufficient time for candidates in a program to complete their work.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.147 & 342.165

Hist.: TS 14, f. 12-20-76, ef. 1-1-77; TS 3-1984, f. & ef. 8-3-84; TS 1-1987, f. & ef. 3-3-87; TSPC 2-2008, f. & cert. ef. 4-15-08

584-010-0035

Submitting Program Modifications, Additions or Eliminations to the Commission

(1) Units will submit plans to the Commission for review of program modifications; addition of new programs for endorsements or grade-level authorizations; and elimination of obsolete programs.

(2) If the unit is unclear whether a plan for review of the program modification, addition or elimination must be submitted to the Commission, the unit will submit a request for clarification to the Executive Director or the Coordinator of Teacher Education.

(3) The Executive Director or the Coordinator of Teacher Education will take all requests for clarification to the Commission at the next regularly scheduled meeting. If the Commission needs additional information, the Commission may request that the unit provide more information in accordance with subsection (4) below or with OAR 584-010-0045.

(4) For each of the following situations, the unit will submit the following appropriate evidence and information to the Commission:

(a) For minor program modifications, the unit will submit evidence that the modifications will not affect the program's approval status or reduce the quality of the program in any way. This evidence may be reported in the unit's annual report.

(b) For major modifications, the unit will submit the evidence required in OAR 584-010-0045 (below).

(c) For program additions such as new endorsement or grade level-authorization programs, the unit will submit evidence that all the appropriate standards necessary for the proposed endorsement or authorization program will be met upon the program's implementation.

(d) For program elimination, the unit will submit information to the Commission detailing the exact date the program will end; the reasons for

the elimination; and assurances that candidates enrolled in the program will be able to complete the program.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.147 & 342.165

Hist.: TS 14, f. 12-20-76, ef. 1-1-77; TSPC 2-2008, f. & cert. ef. 4-15-08

584-010-0045

Major Modification of Programs

(1) A major modification is a change of such magnitude as to substantively alter the program that was last approved by the Commission. Any one of the following events would constitute a major substantive change. Major modifications include but are not limited to alterations of the:

(a) Unit's mission and goals;

(b) Scope or degree level of the unit's offerings;

(c) Autonomy, sponsorship, or the locus of control over the unit;

(d) Unit's administration if the change is a result of unit head's termination by the institution;

(e) Offering academic programs for credit through contractual relationships with external organizations;

(f) Elimination of an endorsement or licensure program; or

(g) Adding a branch campus.

(2) If the Commission determines there has been a major modification to a program, units shall submit some or all of the following information if applicable, at the next regularly scheduled Commission meeting following notification by the Commission of need for review of the modifications:

(a) Proof that the modification will not affect the program's approval status or reduce the quality of the program in any way;

(b) Title of program or endorsement;

(c) Descriptions of proposed modifications;

(d) Proof of official institutional approval of proposal;

(e) Goals or objectives, learning activities and competency of the proposal;

(f) Procedures used in developing the proposal;

(g) Procedures to be used to evaluate the proposal once implemented;

(h) Recommendations from the consortium; or

(i) Arrangements for field activities for proposal.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.147

Hist.: TS 14, f. 12-20-76, ef. 1-1-77; TS 1-1991, f. & cert. ef. 1-2-91; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 2-2008, f. & cert. ef. 4-15-08

584-010-0050

Annual Report from the Unit

(1) Annual reports will be submitted to the Commission by July 31 of each year. Units unable to submit the annual report by this date must notify the Coordinator of Teacher Education of the reasons for the delay and the date the report is expected to be delivered. This information will be immediately shared with the Commission.

(2) The unit shall identify:

(a) Changes to the mission statement and how it relates to the mission of the college or university; and

(b) Long and short term strategic plans;

(3) The unit will show evidence of continual review of programs by:

(a) Reflecting on the degree of accomplishment in meeting the goals through student performance in course work, field studies, and work samples;

(b) Reflecting on the degree of accomplishments in meeting the goals through follow-up of recent graduates; and

(c) Statement of future goals for next academic year with the indicators to be used for measurement of accomplishment.

(4) The unit report:

(a) Any deviation from approved programs;

(b) Modifications of programs not subject to OAR 584-010-0045;

(c) Any change in the liaison officer;

(d) Addition of off-campus courses, including but not limited to the addition of online or distance delivery of courses within an approved program;

(e) Evidence that the consortium meets regularly and has reviewed evaluation results and made recommendations for improvement of program design and operation;

(f) Evidence that the unit has provided written response to consortium recommendations; and

(g) Data indicating number of students enrolled in approved programs by content and authorization levels and how this compares to the previous five years.

(5) Annual reports are not due during the year in which the unit has been subject to an on-site visit for purposes of program approval continua-

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tion. For purposes of this subsection, a year will be from July 1 through June 30..

Stat. Auth.: ORS 342.147
Stats. Implemented: ORS 342.147 & 342.165
Hist.: TS 14, f. 12-20-76, ef. 1-1-77; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 2-2008, f. & cert. ef. 4-15-08

584-010-0055

Review of Programs Not Previously Approved

(1) When a unit seeks approval of a program not previously approved, the unit will submit a proposal for approval of the new program to the Commission. The proposal will describe the means by which the unit is adapting to changing priorities in education programs.

(2) As part of the new program review, the unit will submit a unit report and evidence to demonstrate compliance with appropriate rules and standards relating to the new proposed program including:

- (a) Title of the program;
- (b) Description of the program;
- (c) Justification of need for educational personnel in the proposed program area;

(d) Evidence of institutional capability for carrying out the program, including faculty preparation and experience, financial resources, facilities, library resources, and proof of official institutional approval;

- (e) Curriculum design for the program;
- (f) How the unit will collect data showing:
 - (A) Evidence of candidate content knowledge;
 - (B) The tools for evaluating the practicum or field experience;
 - (C) Evidence of candidate competency; and
 - (D) Tools for follow-up with candidates following program completion;

(g) Goals of the proposed program and the relationship of those goals to any existing previously approved program goals;

(h) Names of members of the unit's program development committee including the unit's liaison officer;

(i) Outline of the organizational structure of faculty in the program showing the relationship of the proposed program to any existing previously approved program or programs;

(j) Steps to be followed in formulation, development, evaluation, and renewal of the program;

- (k) Projected timeline for program implementation;

(l) Recommendation from a consortium review of the proposed program or endorsement; and

(m) Evidence of review of the proposed program by the Oregon Degree Authorization, if appropriate;

(n) Specific objectives of the new licensure program, endorsement or authorization;

(o) Student personnel services and procedures, including selective recruitment, counseling, admission, and policies for retention;

- (p) Proposed arrangements for practica and field experiences; and

(q) Any other information or evidence the Commission determines is appropriate for the proposal being presented.

(3) Upon Commission conditional approval of the program, the unit may enter into contracts with school districts for purposes of preparing candidates. Contracts of more than one year will be contingent upon the length of program approval ultimately granted by the Commission.

(4) New programs are evaluated during the first eighteen to twenty-four months of operation.

(5) The unit will submit plans indicating how standards will be met for aspects of the program which are not fully operational as a part of its annual report.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.147, 342.165
Hist.: TS 14, f. 12-20-76, ef. 1-1-77; TS 3-1988, f. & cert. 4-7-88; TS 1-1991, f. & cert. ef. 1-2-91; TS 1-1992, f. & cert. ef. 1-15-92; TS 5-1993, f. & cert. ef. 10-7-93; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 2-2008, f. & cert. ef. 4-15-08

584-010-0060

Denial of Program Approval

(1) A unit denied approval of its program is entitled to a contested case hearing. However, in an effort to adjudicate the matter short of a formal hearing, the Commission will inform the unit of:

(a) The Commission's intent to deny approval before taking formal action; and

(b) The time and place the matter will come before the Commission and make provisions in the agenda for institutional representatives to address the Commission.

(2) Should the unit not accept Commission denial of approval, the unit may request a contested case hearing pursuant to ORS chapter 183.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.147 & 342.165
Hist.: TS 14, f. 12-20-76, ef. 1-1-77; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 2-2008, f. & cert. ef. 4-15-08

584-010-0080

Appeals

(1) Whenever any educator preparation unit or program is denied approval or has such approval withdrawn, such denial or withdrawal of approval will be treated as a contested case within the meaning of ORS Chapter 183.

(2) Unless the decision of the Commission is accompanied by a finding that immediate withdrawal of approval is necessary to protect the safety and well-being of students in the program, an appeal in a proceeding to withdraw approval shall operate as a stay of withdrawal until determination of the appeal.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120, 342.147 & 342.165
Hist.: TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 2-2008, f. & cert. ef. 4-15-08

584-010-0090

Program Completion Fast Track – Field Operation Audit

(1) The Commission will provide a program completion fast-track option to units. The fast-track option will grant an expedited license to completers of commission-approved programs.

(2) The license will be granted so long as it is evident that all requirements of the license have been met.

(3) For participating units, the commission will schedule biennial field operation audits of the program completion process of each unit.

(a) The review shall audit five (5) percent of the files of program completers at the unit;

(b) A minimum of fifteen (15) files will be reviewed regardless of the number of program completers recommended by a unit for licensure; and

(c) In the event there are less than fifteen (15) files total, all files will be reviewed.

(4) The audit review team will be composed of commission staff, including at least one (1) licensure evaluator.

(5) The review shall examine files and documents for each commission-approved program. These files and documents include:

(a) Documentation of degrees identified on the Program Completion Report, including:

- (A) Degree level;
 - (B) Institution granting degree;
 - (C) Date degree granted; and
 - (D) Major, if specified;
- (b) Coursework completion date;
- (c) Documentation of subject-matter test scores. If the unit is the source of data, then documentation of the date reported to commission staff.

(d) Documentation of Basic Skills Test requirements;

(e) Documentation of test score on a test of Civil Rights Knowledge;

(f) Certificates of Clearance issued to candidates pursuant to OAR 584-017-0055; and

(g) Basis for recommendation of program completion requirements.

(6) As part of the audit, the review team shall examine the following commission agency files and documents for randomly chosen audited candidates:

- (a) PA1 forms submitted;
- (b) Certificates of Clearance issued;
- (c) Notices of Noncompliance issued to programs;
- (d) C1 — Educator application forms;
- (e) Appropriate test score records;
- (f) Fees;
- (g) License issued, based on C-2 request and information; and
- (h) Any appropriate correspondence based on licensure.

(7) All results of these audits shall be reported to the commission by commission staff at the next regularly scheduled meeting following the unit's audit.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.147 & 342.165
Hist.: TSPC 9-2006, f. & cert. ef. 6-15-06; TSPC 2-2008, f. & cert. ef. 4-15-08

584-010-0100

Reports of Program Completion for the Commission

(1) At the end of each term or semester, including summer term, units will submit the Form C-2, Preparation for Teaching Report to Commission staff, for each candidate who has completed an approved program in teaching, school counseling, school psychology, or administration and has met

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the passing scores for the basic skills and subject matter or specialty test(s) required by the Commission for the respective license.

(2) The program completion accounting year will be September 1 through August 31.

(3) By September 30 of each year, Commission staff will produce an electronic report for each unit listing the individuals who were recommended on Form C-2 during the previous accounting year together with the license type and subject or specialty endorsement(s) attached. Units will have until November 1 to make any corrections or additions to the list.

(4) The list of teachers identified through the above procedure will be the subjects of the unit's report card the following April. The list will also be the basis for the State report to the U.S. Secretary of Education for purposes of Title II of the Higher Education Act the following October.

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

Stat. Auth.: ORS 342

Stats. Implemented:

Hist.: TSPC 3-2000, f. 7-17-00, cert. ef. 9-1-00; TSPC 2-2008, f. & cert. ef. 4-15-08

584-010-0140

Three-Year and Six-Year Reports

(1) Commission staff will report candidates' licensure status to units three years following the date of the candidate's program completion. Data analyzed and reported would include:

(a) Licensure status in Oregon; and

(b) Employment status in Oregon public schools, if known.

(2) Commission staff will prepare a similar report in six years following program completion to determine:

(a) Percent of completers who obtained any next stage license;

(b) Employment status, if known, in Oregon public schools; and

(c) Number who have been certified by NBPTS, if known.

(3) Units will correct the list of public school employment based upon data submitted by the candidates and will add employment information as available for those employed in Oregon private schools or employed in public or private schools in other states. These data will be submitted to Commission staff by April 7.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.147 & 342.165

Hist.: TSPC 3-2000, f. 7-17-00, cert. ef. 9-1-00; TSPC 2-2008, f. & cert. ef. 4-15-08

584-017-0175

Adding Authorization Levels to Existing Initial and Continuing Teaching Licenses

(1) The unit makes provisions for adding authorizations to Initial and Continuing Teaching Licenses.

(2) A candidate seeking to add the next contiguous authorization to an existing Initial or Continuing Teaching License will:

(a) Successfully complete at least six (6) quarter hours or four (4) semester hours of preparation in child or adolescent development, whichever is appropriate for the level being completed. The program will include methods of instruction in the appropriate subjects at the requested authorization level and may include taking additional subject-matter tests to qualify for the authorization level; and

(b) One of the following practicum experiences, which must include preparation of one (1) work sample to document teaching effectiveness at the new authorization level:

(A) A practicum of two (2) semester hours or three (3) quarter hours, which except as specified below may or may not be part of a longer preparation that includes content or methods courses in the subject area, in an institution approved to prepare teachers for that endorsement; or

(B) Verification of one (1) year of experience teaching the new subject-area at least one (1) hour each day or the equivalent on either an optional assignment of ten (10) hours or less or on an approved conditional assignment permit (CAP) as allowed by OAR 584-036-0081.

(3) A candidate may add an authorization level that is not contiguous to an existing Initial or Continuing Teaching License if, the candidate successfully completes an approved program at that level. Completion of the approved program shall include the required practicum experience and completion of a work sample to document teaching effectiveness at the new authorization level.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 2-2005, f. & cert. ef. 4-15-05; TSPC 9-2006, f. & cert. ef. 6-15-06; TSPC 2-2008, f. & cert. ef. 4-15-08

584-017-0201

Substitute License When Program is Not Complete

(1) The commission will issue a Substitute Teaching License to a qualified candidate for whom the unit has submitted documentation of completion of academic requirements but without completion of other licensure requirements.

(2) The Substitute Teaching License will be valid for three years and will be issued pursuant to OAR 584-060-0181. These candidates will be reported by the unit as program completers in the year that all of their licensure requirements are completed.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.125

Hist.: TSPC 3-2000, f. 7-17-00, cert. ef. 9-1-00; Renumbered from 584-010-0130, TSPC 2-2008, f. & cert. ef. 4-15-08

584-017-0355

Authorization Levels for Initial School Psychologists

The unit assures that candidates for the Initial School Psychologist License demonstrate knowledge, skills and competencies for four authorization levels by:

(1) Completing preparation in psychological foundations and methods appropriate for prekindergarten through grade 12 (prek-12) grade authorization levels; and

(2) Documenting knowledge by passing the Commission-approved test for the Initial School Psychologist License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 6-2000, f. & cert. ef. 11-27-00; TSPC 2-2008, f. & cert. ef. 4-15-08

584-036-0067

Temporary One-Year Extension of Initial Licenses

(1) Any licensed educator who possesses an Initial Teaching License, an Initial School Counselor License, an Initial School Psychologist License or an Initial Administrator License that was granted on or before October 3, 2003, is granted one extra year on the life of their license to complete the Continuing License requirements.

(2) The TSPC will administer this extension internally by issuing a letter to the licensees who are entitled to the one year extension and altering the expiration date on their license within the TSPC database. Some license holders may receive the extra year upon renewal of their license.

(3) An educator can check on her or his expiration date by accessing their records on the TSPC Web site.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.136

Hist.: TSPC 1-2004(Temp), f. & cert. ef. 3-17-04 thru 9-12-04; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 2-2008, f. & cert. ef. 4-15-08

584-038-0004

Adding Endorsements to a Basic or Standard License

(1) An endorsement will be added on a basic or standard license upon documentation of a passing score as currently specified by the commission on a designated test of subject mastery, together with completion of one of the following practical experiences: (For Basic or Standard Elementary License practicum exceptions, see subsection (4) below.)

(a) A practicum of two semester hours or three quarter hours, which except as specified below may or may not be part of a longer preparation that includes content or methods courses in the specialty, in an institution approved to prepare teachers for that endorsement; or

(b) Verification of teaching experience on either an optional assignment of ten hours or less or an approved conditional assignment permit as allowed by OAR 584-036-0081 if teaching in Oregon; or

(c) Verification of one year of half-time or more teaching experience in the endorsement; or

(d) Completion of an approved program in the new specialty area.

(2) Alternately, the applicant may qualify for a new endorsement through completion of academic requirements, together with completion of either of the following practical experiences:

(a) Verification of five years of experience teaching the new specialty on a license valid for the assignment. However, all ESOL, ESOL/bilingual experience must be completed outside of Oregon on a license valid for the assignment.

(b) Verification of teaching experience on either an optional assignment of ten hours or less or an approved conditional assignment permit as allowed by OAR 584-036-0081 if teaching in Oregon.

(3) Middle-School Endorsements: Middle-School Endorsements may be added to a Basic or Standard Teaching License under the conditions specified in subsection (1) above with passage of any of the middle-school Commission approved tests in Language Arts, Social Studies or Science.

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The endorsement will be limited to teaching those subjects in grades 5 through 9 only. (See, OAR 584-036-0015 for rules on assignments.)

(4) Endorsements on Elementary Licenses: A subject-matter endorsement may be added to a Basic or Standard Elementary License in the core academic areas of Language Arts; Social Studies; and Science by passage of a Commission-approved test in the subject-matter area only. An additional practicum is not required.

(5) In addition to the requirements described in subsection (1)(a) above, an approved institutional program including content and methods courses is always required as preparation for added endorsement in elementary education, special education, communication disorders, hearing impairment, or visual impairment.

(6) Approved course preparation is required for adding endorsement in subjects for which no subject mastery test is available.

(7) Subjects in which the commission does not offer endorsement may be taught by anyone holding a valid basic or standard license.

(8) Academic requirements for basic endorsement are detailed in sections of OAR 584-038 below, and academic requirements for standard endorsement are detailed in OAR 584-040. Also, career and technical education endorsements to basic, standard, and pre-1965 licenses are discussed in OAR 584-042-0009.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 6-2005(Temp), f. & cert. ef. 8-16-05 thru 1-30-06; TSPC 9-2005, f. & cert. ef. 11-15-05; TSPC 2-2008, f. & cert. ef. 4-15-08

584-044-0011

Basic Counselor

An applicant for the basic counselor endorsement must complete the requirements under either section (1) or section (2) of this rule.

(1) Applicants with teaching experience must meet all of the following requirements:

(a) Hold, have held, or be eligible for an Oregon teaching license or comparable teaching license issued by another state;

(b) Have completed two years of successful teaching experience in Oregon schools or out-of-state public or regionally accredited private schools; or one year of teaching experience and one year of public school or regionally accredited private school intern counseling experience; and

(c) Have completed 24 quarter hours of graduate preparation designed to develop competence in:

(A) Counseling theory and interventions to include early intervention strategies;

(B) Groups: theory and interventions;

(C) Lifestyle and career development;

(D) Appraisal of individuals;

(E) Social and cultural foundations;

(F) Consultation and community resources; and

(G) Parent/family relations.

(d) Have completed six quarter hours of supervised practicum or internship in a counseling role in a public or regionally accredited private school. One year of full-time successful counseling experience in public schools on a valid state license is substituted for the practicum or internship required under subsection (1)(d) of this rule.

(2) Applicants without prior teaching experience must complete an Oregon approved counselor education program that culminates in a master's degree. These applicants must complete both the teaching and counseling practica.

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 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 2-1989, f. & cert. ef. 2-16-89; TS 6-1989, f. & cert. ef. 10-6-89; TS 9-1991, f. & cert. ef. 8-7-91; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 2-2008, f. & cert. ef. 4-15-08

584-044-0015

Standard Personnel Service License Requirements

An applicant for a Standard Personnel Service License must assemble all materials necessary for evaluation for a license and must submit these materials as a single package. An incomplete application will be returned. The applicant must:

(1) Provide the information requested on the Application, Form C-1, and sign in the space provided. The character questions pertaining to dismissal, revocation, and conviction must be answered and supporting materials attached to the application, if necessary.

(2) Provide verification of successful personnel service experience in Oregon schools in the endorsement area while holding a Basic Personnel Service License with that endorsement. Experience must be verified by the

employing superintendent on the Professional Educational Experience Report.

(a) Three years of one-half time or more experience is required;

(b) Those receiving a Basic Personnel Service License prior to January 15, 1994, are required to verify two years of experience or three years of one-half time or more experience, whichever is less.

(3) Provide either official transcripts together with a Form C-2, verifying completion of an approved Standard Personnel Service License program, or official transcripts verifying completion of a master's degree from an approved teacher education institution in another state. Form C-2 and transcripts are not required for the standard school psychologist endorsement.

(4) Present evidence of knowledge of the laws prohibiting discrimination, if not previously verified.

(5) Submit a check or money order for the evaluation fee and, if applicable, submit the late application fee.

(6) Provide verification of recent educational experience.

(7) Verify completion of academic preparation for one of the standard endorsements outlined in OAR 584-044-0021 through 584-044-0023.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

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 3-1988, f. & cert. 4-7-88; TS 5-1988, f. 10-6-88, cert. ef. 1-15-89; TS 2-1989, f. & cert. ef. 2-16-89; TS 9-1991, f. & cert. ef. 8-7-91; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TSPC 2-2008, f. & cert. ef. 4-15-08

584-044-0023

Standard School Psychologist

No additional preparation is required, only the experience as specified in OAR 584-044-0015(2).

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

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 3-1983, f. & ef. 5-16-83; TS 2-1989, f. & cert. ef. 2-16-89; TS 2-1992, f. 5-6-92, cert. ef. 1-15-94; TSPC 2-2008, f. & cert. ef. 4-15-08

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 appropriate 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

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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

584-046-0024

Standard Superintendent

(1) Twenty-four quarter hours of graduate preparation, in addition to requirements for the basic superintendent endorsement specified in OAR 584-046-0019, designed to strengthen the applicant's background in school administration, to include:

- (a) The teaching-learning process;
- (b) Planning and maintaining school facilities;
- (c) Policy development and implementation;
- (d) Research, evaluation, and goal setting; and
- (e) Communications.

(2) All of the basic and standard superintendent 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. 12-29-77, 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 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 2-2008, f. & cert. ef. 4-15-08

584-048-0105

Five-Year Teaching License Renewal

A Five-Year Teaching License originally issued prior to October 15, 1965, may be renewed on verification of one full year of experience or equivalent pursuant to OAR 584-048-0015.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TSPC 6-1983, f. & ef. 10-18-83; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 2-2008, f. & cert. ef. 4-15-08

584-052-0015

Preparation in Another State

(1) An applicant whose academic degrees can be legally claimed under Oregon degree law may have his or her preparation evaluated by the Commission if the applicant holds a current license issued by another state or has completed a preparation program in an out-of-state college or university which would confer entitlement to such a license. One of the following may result:

(2) If the out-of-state applicant with valid degrees and credits has met the professional requirements established by TSPC and has completed a course of study substantially similar to that required of an instate applicant, but has not met all requirements for initial licensure, the commission will issue an Initial Teaching License together with instructions on how to fill remaining requirements.

(3) If the applicant does not meet requirements for basic licensure, the Commission may issue an emergency license when the license being requested is one in which there are insufficient applicants or when the employing district submits verification of extenuating circumstances.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 200 & 342.400

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1981, f. & ef. 4-8-81; TS 2-1981(Temp), f. & ef. 8-17-81; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 3-1987(Temp), f. & ef. 8-4-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2008, f. & cert. ef. 4-15-08

584-060-0002

Definitions for Division 060

(1) "Alternative Assessment:" Procedures established by the Commission for candidates seeking licensure who fail to achieve a passing score on required subject matter or specialty area licensure tests for endorsement or authorization.

(2) "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. A copy of the C-1 can be found on TSPC's Web page at: www.tspc.state.or.us.

(3) "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.

(4) "Approved Institution:" A U.S. regionally accredited institution of higher education approved to prepare licensed personnel by a U.S. govern-

mental jurisdiction in which the institution is located. See definition of "Regional Accrediting Associations" at OAR 584-005-0005.

(5) "Approved Programs:" 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.

(6) "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.

(7) "Basic Skills Tests:" Tests of basic reading, writing and mathematics as approved by the commission. These tests may only be waived if the applicant possesses a regionally accredited doctor's degree or was licensed in Oregon prior to 1985.

(8) "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.

(9) "Endorsement:" The subject matter or specialty education field and/or grade authorization in which the individual is licensed to teach.

(10) "National Board for Professional Teaching Standards (NBPTS):" A professional board established to award a National Teaching Certificate to qualified educators.

(11) "Out of State Licenses or Certificates:" A certificate or license valid for full-time employment which is at least equivalent to the Oregon license being requested and is 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.

(12) "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.

(13) "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.

(14) "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.

(15) "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.

(16) "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.

(17) "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. Related to "successful experience".

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

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232

Hist.: TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 2-2008, f. & cert. ef. 4-15-08

584-060-0012

Initial I Teaching License Requirements

(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 Teaching License for three years. The first license will be issued for three years plus time to the applicant's birthday.

(2) The Initial I Teaching License is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty. (See 584-060-0052 for Authorization Levels.)

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(3) To be eligible for an Initial I Teaching License, an applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator; and

(b) Hold a bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission. A master's degree or a doctoral degree from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure; and

(c) Complete an initial teacher education program approved by the commission in Oregon, or complete a state-approved teacher preparation program in any U.S. jurisdiction, or complete a foreign program evaluated as satisfactory by an Oregon institution approved to offer the corresponding program; and

(d) Receive a passing score as currently specified by the commission on each of one or more tests of subject mastery for license endorsement or authorization; and

(A) Any subject-matter test, except the basic skills tests, may be waived if the applicant demonstrates special academic preparation satisfactory to the commission together with five years of experience teaching the specific subject matter on a license valid for the assignment in a public school or regionally accredited private school in a U.S. jurisdiction before holding any Oregon license. The five years of experience must be acquired entirely outside of the state of Oregon and must be obtained while holding an out-of-state license valid for the assignment;

(B) Some applicants may be eligible for alternative assessment for waiver of the subject-matter tests only. (See OAR 584-052-0030 to 0033 regarding Alternative Assessment guidelines and regulations.)

(e) Receive a passing score as currently specified by the commission on a test of basic verbal and computational skills; (See 584-060-0002 for definition of 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; and

(g) Furnish fingerprints in the manner prescribed by the commission and satisfy requirements of OAR 584-036-0060 Character Questions to Establish Fitness to Serve as an Educator; (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(h) Provide a copy of a recognized and current standard first aid card pursuant to ORS 342.126;

(i) Complete a recent experience during the three-year period immediately preceding application. (See OAR 584-005-0005 for definition of Recent Experience.)

(4) Applicants who have completed programs from states other than Oregon will be required to submit a C-2 form from the institution granting program completion, in addition to transcripts, verifying completion of the teacher education program. A license from another state valid for unrestricted full time teaching may be accepted in lieu of a C-2. A teaching license issued by the U.S. Department of Defense will be considered as a license from another state. Completion of alternative routes teaching programs through school districts or other avenues are subject to Executive Director approval.

(5) The Initial I Teaching License may be renewed two times for three years upon showing progress toward completion of the renewal requirements as described in OAR 584-060-0013 during the life of the Initial I Teaching 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;

(b) The educator must qualify for an Initial II Teaching License upon expiration of ten years following the date the first Initial I Teaching License was issued. A one year unconditional extension may be obtained if the educator is unable to meet all requirements within the nine year period. (See, OAR 584-060-0013 Initial II Teaching License.)

(6) The Executive Director may grant an extension to the Initial I Teaching License for a term determined by the director, if and only if extraordinary circumstances can be demonstrated that the teacher was unable to complete the requirements for the Initial II Teaching License during the life of the Initial I Teaching License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.165 & 342.136

Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 5-2005(Temp), f. & cert. ef. 7-1-05 thru 12-28-05; TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 1-2007(Temp), f. & cert. ef. 3-30-07 thru 9-26-07; Administrative correction 10-16-07; TSPC 7-2007, f. & cert. ef. 12-14-07; TSPC 2-2008, f. & cert. ef. 4-15-08

584-060-0014

Initial Teaching License for Out-of-State Candidate First Application

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant who is applying for licensure in Oregon for the first time and has completed an out-of-state approved teacher-education program shall be granted an Initial Teaching License for eighteen (18) months.

(2) The Initial Teaching License is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty. (See 584-060-0052 for Authorization Levels.)

(3) To be eligible for an Initial Teaching License, an out-of-state applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator; and

(b) Hold a bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission. A master's degree or a doctoral degree from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure; and

(c) Complete an initial teacher education program in any U.S. jurisdiction, or complete a foreign program evaluated as satisfactory by an Oregon institution approved to offer the corresponding program; and Applicants who have completed programs from states other than Oregon will be required to submit a C-2 form from the institution granting program completion, in addition to transcripts, verifying completion of the teacher education program. A license from another state valid for unrestricted full time teaching may be accepted in lieu of a C-2. A teaching license issued by the U.S. Department of Defense will be considered as a license from another state. Completion of alternative routes teaching programs through school districts or other avenues are subject to Executive Director approval;

(d) Furnish fingerprints in the manner prescribed by the commission and satisfy the requirements of OAR 584-036-0060 Character Questions to Establish Fitness to Serve as an Educator. (See also, OAR 584-036-0062 for Criminal Records Check Requirement;)

(e) Complete a recent experience during the three-year period immediately preceding application; and (See OAR 584-005-0005 for definition of Recent Experience;)

(4) Upon expiration of the Initial Teaching License the applicant must apply for an Initial I Teaching License. Qualified applicants will be issued an Initial I Teaching License for 18 months plus time to the applicant's next birthday.

(5) To be eligible for an Initial I Teaching License, an applicant must:

(a) Receive a passing score as currently specified by the commission on a test of basic verbal and computational skills; and (See 584-060-0002 for definition of Basic Skills Tests;)

(b) Receive a passing score as currently specified by the commission on each of one or more tests of subject mastery for licensure endorsement or authorization; and

(A) Any subject-matter test, except the basic skills tests, may be waived if the applicant demonstrates special academic preparation satisfactory to the commission together with five years of experience teaching the specific subject matter on a license valid for the assignment in a public school or regionally accredited private school in a U.S. jurisdiction before holding any Oregon license. The five years of experience must be acquired entirely outside of the state of Oregon and must be obtained while holding an out-of-state license valid for the assignment; or

(B) Some applicants may be eligible for alternative assessment for waiver of the subject-matter tests only. (See OAR 584-052-0030 to 0033 regarding Alternative Assessment guidelines and regulations.)

(c) 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.

(d) Provide a copy of a recognized and current standard first aid card pursuant to ORS 342.126.

(6) The Initial I Teaching License may be renewed two times for three years upon showing progress toward completion of the renewal requirements as described in OAR 584-060-0013 during the life of the Initial I Teaching License under the following conditions: 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. (See, OAR 584-060-0012, Initial I Teaching License Requirements and 584-060-0013, Initial II Teaching License Requirements

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for further information related to continuous renewal and retention of the Initial I and Initial II Teaching Licenses.)

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.165, 342.136, 342.223 - 342.232

Hist.: TSPC 1-2007(Temp), f. & cert. ef. 3-30-07 thru 9-26-07; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 2-2008, f. & cert. ef. 4-15-08

584-060-0052

Adding Authorization Levels to Existing Initial and Continuing Teaching Licenses

(1) A candidate seeking to add the next contiguous authorization level to an existing Initial or Continuing Teaching License will complete the following:

(a) A program of at least six (6) quarter hours or four (4) semester hours of preparation in child or adolescent development, whichever is appropriate for the level being completed. The program will include methods of instruction in the appropriate subjects at the requested authorization level and may include taking additional subject-matter tests to qualify for the authorization level. Verification from the institution at which the program is completed is required to add the authorization; and

(b) One of the following practicum experiences, which must include preparation of one (1) work sample to document teaching effectiveness at the new authorization level:

(A) A practicum of two (2) semester hours or three (3) quarter hours, which except as specified below may or may not be part of a longer preparation that includes content or methods courses in the subject area, in an institution approved to prepare teachers for that endorsement; or

(B) Verification of one (1) year of experience teaching the new subject-area at least one (1) hour each day or the equivalent on either an optional assignment of ten (10) hours or less or on an approved conditional assignment permit (CAP) as allowed by OAR 584-036-0081.

(2) A candidate may add an authorization level that is not contiguous to an existing Initial or Continuing Teaching License if:

(a) The candidate successfully completes an approved program at that level; and

(b) The completed program includes the required practicum experience and completion of a work sample to document teaching effectiveness at the new authorization level.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232

Hist.: TSPC 3-2005(Temp), f. & cert. ef. 4-15-05 thru 9-30-05; TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 9-2006, f. & cert. ef. 6-15-06; TSPC 2-2008, f. & cert. ef. 4-15-08

584-060-0210

Emergency Teaching License

(1) An Emergency Teaching License may be issued when a school district demonstrates extenuating circumstances that merit the issuance of the license in order to protect the district's programs or students.

(2) The Emergency Teaching License shall be issued solely at the discretion of the Executive Director for any length of time deemed necessary to protect the district's programs or students. The Executive Director may consider efforts the educator has made in meeting licensure requirements. Additionally, the Executive Director will consider academic preparation or experience the proposed educator has had in the area in which the district is requesting the license.

(3) An Emergency Teaching License will not exceed one year unless the educator or the district has presented unusual extenuating circumstances.

(4) The Emergency Teaching License is not subject to the 120 day grace period allowed for licensure renewal purposes under ORS 342.127

Stat. Auth.: ORS 342.125

Stats. Implemented: ORS 342.120 - 143, 342.153, 342.165 & 342.223 - 342

Hist.: TSPC 3-2003, f. & cert. ef. 5-15-03; TSPC 8-2004(Temp), f. & cert. ef. 9-10-04 thru 3-9-05 (Suspended by TSPC 9-2004(Temp), f. & cert. ef. 9-5-04 thru 3-9-05); TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 2-2008, f. & cert. ef. 4-15-08

584-065-0070

Knowledge, Skills and Abilities for Health Education Endorsement

(1) In addition to passing the required Commission-approved subject-matter, examinations for health education and completing the required practicum experience, the following requirements must be met to add a health education endorsement onto any Initial or Continuing Teaching License. The requirements to add a health education endorsement onto a Basic or Standard Teaching License can be found at: OAR 584-038-0110 and 584-040-0100.

(2) Candidates Assess Individual and Community Needs for Health Education. Candidates will:

(a) Obtain health-related data about social and cultural environments, growth and development factors, needs, and interests of students;

(b) Distinguish between behaviors that foster and those that hinder well-being; and

(c) Candidates determine health education needs based on observed and obtained data.

(3) Candidates Plan Effective Health Education Programs. Candidates will:

(a) Recruit school and community representatives to support and assist in program planning;

(b) Develop a logical scope and sequence plan for a health education program;

(c) Formulate appropriate and measurable learner objectives; and

(d) Design educational strategies consistent with specified learner objectives.

(4) Candidates Implement Health Education Programs. Candidates will:

(a) Analyze factors affecting the successful implementation of health education and Coordinated School Health Programs (CSHPs);

(b) Select resources and media best suited to implement program plans for diverse learners;

(c) Exhibit competence in carrying out planned programs; and

(d) Monitor educational programs, adjusting objectives and instructional strategies as necessary.

(5) Candidates Evaluate the Effectiveness of Coordinated School Health Programs. Candidates will:

(a) Develop plans to assess student achievement of program objectives;

(b) Carry out evaluation plans;

(c) Interpret results of program evaluation; and

(d) Infer implications of evaluation findings for future program planning.

(6) Candidates Coordinate Provision of Health Education Programs and Services. Candidates will:

(a) Develop a plan for coordinating health education with other components of a school health program;

(b) Demonstrate the dispositions and skills to facilitate cooperation among health educators, other teachers, and appropriate school staff;

(c) Candidates formulate practical modes of collaboration among health educators in all settings and other school and community health professionals; and

(d) Candidates organize professional development programs for teachers, other school personnel, community members, and other interested individuals.

(7) Candidates Act as a Resource Person in Health Education. Candidates will:

(a) Utilize computerized health information retrieval systems effectively;

(b) Establish effective consultative relationships with those requesting assistance in solving health-related problems;

(c) Interpret and respond to requests for health information; and

(d) Select effective educational resource materials for dissemination.

(8) Candidates Communicate Health and Health Education Needs, Concerns, and Resources. Candidates will:

(a) Interpret concepts, purposes, and theories of health education;

(b) Predict the impact of societal value systems on health education programs;

(c) Select a variety of communication methods and techniques in providing health information; and

(d) Foster communication between health care providers and consumers.

(9) Candidates Apply Appropriate Research Principles and Methods in Health Education. Candidates will:

(a) Conduct thorough reviews of health-related literature;

(b) Use appropriate qualitative and quantitative research methods; and

(c) Apply research to health education practices.

(10) Candidates Have the Skills to Administer Health Education Programs. Candidates will:

(a) Develop and manage health education program fiscal resources;

(b) Develop and manage human resources; and

(c) Exercise organizational leadership.

(11) Candidates Advance the Profession of Health Education. Candidates will:

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(a) Provide a critical analysis of current and future needs in health education;

(b) Assume responsibility for advancing the profession;

(c) Apply ethical principles as they relate to the practice of health education.

(12) Candidates Have the Ability to Differentiate Instruction. Candidates will:

(a) Demonstrate competencies in delivering differentiated instructional strategies that promote equitable learning opportunities and success for all students regardless of native language, socioeconomic background, ethnicity, gender, disability or other individual characteristics;

(b) Identify, select, and implement appropriate instruction that is sensitive to students' strengths and weaknesses, multiple needs, learning styles, and prior experiences including but not limited to cultural, ethnic, personal, family and community influences; and

(c) Use appropriate services and resources in the delivery of differentiated instruction.

(13) This endorsement is valid to teach:

(a) Health Education;

(b) Advanced Health;

(c) Food and Fitness;

(d) Drug Education;

(e) Health Promotion;

(f) Health and Wellness Education;

(g) Individual Health Projects;

(h) Chemical and Substance Abuse Education;

(i) Family Living; and

(j) Other health-related courses or activities.

(14) This endorsement is required for teaching any subject in subsection (12) above for more than ten hours per week, or if conditionally assigned in more than one subject (See, OAR 584-036-0081) on:

(a) Any Basic or Standard Teaching License with other than an elementary endorsement in grades 5 through 12; and

(b) Any Initial or Continuing Teaching License with a high school authorization.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 -342.143, 342.153, 342.165, 342.223 - 342.232

Hist.: TSPC 2-2005, f. & cert. ef. 4-15-05; TSPC 2-2008, f. & cert. ef. 4-15-08

584-065-0080

Knowledge, Skills and Abilities for Basic Math Endorsement

(1) In addition to passing the required Commission-approved subject-matter, examinations for basic math and completing the required practicum experience, the following requirements must be met to add a basic math endorsement onto any Initial or Continuing Teaching License. The requirements to add a basic math endorsement onto a Basic or Standard Teaching License can be found at OAR 584-038-0180.

(2) Demonstrated Content Knowledge:

(a) For knowledge of numbers, operations, candidates will:

(A) Demonstrate conceptual understanding of complex numbers and real numbers particularly rational numbers and integers; ways of representing numbers; relationships among numbers and number systems; and the meaning of operations; and

(B) Be computationally proficient and choose the appropriate computational format such as exact or approximate; and method, such as mental, paper and pencil, or electronic.

(b) For knowledge of algebra and functions, candidates will:

(A) Understand the various roles of algebra and demonstrate conceptual understanding of variables and functions including linear, quadratic and exponential functions and their inverses;

(B) Use a variety of representations including verbal, pictorial, tabular, symbolic and graphic to emphasize relationships among quantities; and

(C) Demonstrate conceptual understanding of and skill in appropriate use of symbols.

(c) For knowledge of geometry, candidates will:

(A) Use spatial visualization and geometric modeling and constructions to explore and analyze geometric shapes, structures, and their properties;

(B) Make conjectures about two- and three-dimensional shapes and offer justifications for conjectures; and

(C) Apply coordinates geometry and transformations including the use of congruence, similarity, and symmetry to analyze mathematical situations.

(d) For knowledge of measurement, candidates will:

(A) Understand measurement processes including estimation, accuracy and choice of measurement tool for both U.S. customary and metric systems; and

(B) Understand and use direct and indirect measurement techniques and formulas for both two- and three-dimensional figures.

(e) For knowledge of data analysis and probability and statistic, candidates will:

(A) Design investigations, collect data, use a variety of ways to display the data and critically interpret data representations;

(B) Make predictions and draw conclusions involving uncertainty by applying basic concepts of probability; and

(C) Use appropriate statistical methods to analyze and describe shape, spread, and center data; then they use that information to make inferences.

(f) For knowledge of calculus, candidates will:

(A) Demonstrate a conceptual understanding of limits, particularly in relation to understanding series, repetitive processes and non-terminating decimals; and

(B) Demonstrate a conceptual understanding of rate of change and the relationship to minimums, maximums and area of a region.

(3) Demonstrated Competency in Following Process Standards.

(a) For competency in problem solving, candidates will engage in mathematical inquiry through understanding a problem, exploring, conjecturing, experimenting and justifying.

(b) For competency in reasoning and proof, candidates will:

(A) Select and use various types of reasoning including categorizing based on numeric and geometric properties, and using Venn diagrams, set notation and operations; and

(B) Develop and evaluate mathematical arguments such as informal proofs, and the foundations on which arguments are built.

(c) For competency in communication, candidates will:

(A) Organize and consolidate their mathematical thinking through communication;

(B) Communicate coherently and use the language of mathematics, such as symbols and terminology, to express ideas precisely; and

(C) Analyze the mathematical thinking of others.

(d) For competency in representation, candidates will:

(A) Use multiple forms of representation including concrete models, pictures, diagrams, tables and graphs; and

(B) Use invented and conventional terms and symbols to communicate reasoning and solve problems.

(e) For competency in connections, candidates will:

(A) Understand how mathematical ideas interconnect and build on one another to produce a coherent whole; and

(B) Recognize and apply mathematics in contexts outside of mathematics.

(4) Demonstrated knowledge and skill in mathematics pedagogy:

(a) For demonstrated knowledge and skill in the principles equity candidates will demonstrate high expectations and strong support for all students to learn mathematics.

(b) For demonstrated knowledge and skill in developing curriculum, candidates will:

(A) Map curriculum that is coherent, focused on important mathematics and carefully sequenced;

(B) Be familiar with curriculum both preceding and following the middle level; and

(C) Be able to discern the quality of learning opportunities for students when given a particular task, activity, educational software, etc., and are able to make adaptations to assure quality.

(c) For demonstrated knowledge and skill in developing quality learning environment candidates will foster a classroom environment conducive to mathematical learning through:

(A) Providing and structuring the time necessary to explore sound mathematics and grapple with significant ideas and problems;

(B) Using the physical space and materials in ways that facilitate students' learning of mathematics;

(C) Providing a context that encourages the development of mathematical skill and proficiency; and

(D) Respecting and valuing students' ideas, ways of thinking and mathematical dispositions.

(d) For demonstrated knowledge and skill in teaching, candidates will:

(A) Understand what mathematics students know and need to learn and then challenge and support them to learn it well; and

(B) Orchestrate discourse by:

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- (i) Posing questions and tasks that elicit, engage and challenge each student's thinking;
 - (ii) Listening carefully to students' ideas; asking students to clarify and justify their ideas orally and in writing;
 - (iii) Deciding what to pursue in depth from among the ideas that students bring up during a discussion;
 - (iv) Deciding when and how to attach mathematical notation and language to students' ideas;
 - (v) Deciding when to provide information, when to clarify an issue, when to model, when to lead, and when to let a student struggle with a difficulty; and
 - (vi) Monitoring students' participation in discussions and deciding when and how to encourage each student to participate.
- (e) For demonstrated knowledge and skill in learning, candidates will:
- (A) Know that students must learn mathematics with understanding, actively building new knowledge from experience and prior knowledge; and
 - (B) Have the ability to recognize and move students from concrete to abstract levels of understanding.
- (f) For demonstrated knowledge and skill in assessment, candidates will:
- (A) Use a variety of formal and informal, formative and summative assessment techniques to support the learning of important mathematics;
 - (B) Understand how, why, and when to use various assessment techniques and tools; as well as how these tools inform their understanding about student thinking and understanding; and
 - (C) Plan instruction based upon the information obtained through classroom and external assessments of each student's developmental level.
- (g) For demonstrated knowledge and skill in technology, candidates will:
- (A) Understand that technology is an integral part of teaching and learning mathematics both influencing what is taught and enhancing how it is learned.
 - (B) Demonstrate effective and appropriate use of technology.
 - (h) For demonstrated knowledge and skill in mathematic historical development candidates will demonstrate knowledge of historical and cultural influences in mathematics including contributions of underrepresented groups.
 - (i) For demonstrated ability to differentiate instruction, candidates will demonstrate competencies in delivering differentiated instructional strategies that promote equitable learning opportunities and success for all students regardless of native language, socioeconomic background, ethnicity, gender, disability or other individual characteristics. Candidates will:
 - (A) Identify, select, and implement appropriate instruction that is sensitive to students' strengths and weaknesses, multiple needs, learning styles, and prior experiences including but not limited to cultural, ethnic, personal, family and community influences; and
 - (B) Use appropriate services and resources in the delivery of differentiated instruction.
- (5) This endorsement is valid to teach any course at or below Algebra I including:
- (a) Remedial Math;
 - (b) Mathematics;
 - (c) Basic Math;
 - (d) Math Concepts (grades 6-8);
 - (e) Pre-Algebra;
 - (f) Introductory Algebra;
 - (g) Basic Algebra;
 - (h) Algebra I;
 - (i) Competency Mathematics;
 - (j) Consumer Mathematics;
 - (k) General Math I & II;
 - (l) Mathematics Fundamentals;
 - (m) Math Lab;
 - (n) Middle Mathematics Skills;
 - (o) Problem Solving; and
 - (i) Other math-related courses at or below the Algebra I level.
- (6) This endorsement is required for teaching any subject in subsection (4) above:
- (a) More than 51% of a full teaching assignment on a Basic or Standard Teaching License with an elementary endorsement issued after 1987 with the licensure code of (016); or
 - (b) More than 10 hours per week or if conditionally assigned in more than one subject, (See, OAR 584-036-0081) on:

- (A) Any Basic or Standard Teaching License with other than an elementary endorsement; or
 - (B) An Initial or Continuing Teaching License with a high school authorization.
- Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232
Hist.: TSPC 2-2005, f. & cert. ef. 4-15-05; TSPC 2-2008, f. & cert. ef. 4-15-08

584-070-0132

Emergency School Counselor License

- (1) An Emergency School Counselor License may be issued when a school district demonstrates extenuating circumstances that merit the issuance of the license in order to protect the district's programs or students.
 - (2) The Emergency School Counselor License shall be issued solely at the discretion of the Executive Director for any length of time deemed necessary to protect the district's programs or students. The Executive Director will consider the following:
 - (a) Efforts the educator has made in meeting school counselor licensure requirements; and
 - (b) Whether educator has had any academic preparation or experience in the area of counseling.
 - (3) An Emergency School Counselor License generally will not exceed one year unless the educator or the district has presented unusual extenuating circumstances.
 - (4) The Emergency School Counselor License is not subject to the 120 days allowed for licensure renewal purposes under ORS 342.127.
- Stat. Auth.: ORS 342.125
Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.342
Hist.: TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 2-2008, f. & cert. ef. 4-15-08

Veterinary Medical Examining Board Chapter 875

Rule Caption: Adds conduct for which Board may discipline.

Adm. Order No.: VMEB 3-2008

Filed with Sec. of State: 3-19-2008

Certified to be Effective: 3-19-08

Notice Publication Date: 11-1-2007

Rules Amended: 875-011-0010

Subject: 875-011-0010(19) Adds duty to comply to existing rule.

875-011-0010(21) Adds misrepresentation or omission on license renewal to discipline criteria.

875-011-0010(22) Adds violations of veterinary laws in other states to discipline criteria.

875-011-0010(23) Adds violations of other laws relating to veterinary medicine, including Oregon Racing Commission, to discipline criteria.

Rules Coordinator: Lori V. Makinen—(971) 673-0224

875-011-0010

Unprofessional or Dishonorable Conduct

The Board interprets "unprofessional or dishonorable conduct" to include, but is not limited, to the following:

- (1) Gross negligence in the practice of veterinary medicine.
- (2) A pattern, practice or continuous course of negligence, ignorance, incompetence or inefficiency in the practice of veterinary medicine. The incidents may be dissimilar.
- (3) Performing surgery, taking a radiograph or attempting a treatment without first obtaining the client's permission, except in emergency circumstances. Permission may be reasonably implied under some circumstances.
- (4) Failure without good cause to perform a specific surgery or treatment in a timely manner, after agreeing to perform the surgery or treatment.
- (5) Failure to properly prepare an animal for surgery or treatment.
- (6) Failure to use sterile instruments and equipment when performing surgery, when the circumstances require the use of sterile instruments and equipment.
- (7) Failure to use generally accepted diagnostic procedures and treatments, without good cause.
- (8) Failure to obtain the client's written permission before using unorthodox or non-standard methods of diagnosis or treatment. Acupuncture, chiropractic or herbal medicine is not considered unorthodox or non-standard.
- (9) Failure to advise a client of home care or follow-up treatment required after a particular diagnosis or treatment.

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(10) Handling animals in an inhumane manner or, except when the veterinarian reasonably believes it to be necessary, handling animals with great force.

(11) Charging for services not rendered.

(12) Failure to maintain records which show, at a minimum, the name of the client, identification of the patient, its condition upon presentation, the tentative diagnosis, treatment performed, drug administered, amount of drug, any prescription, and the date of treatment. For companion animals, identification of the patient should include species, breed, name, age, sex, color, and distinctive markings, where practical.

(13) Failure to provide to a client in a timely manner, upon request, an accurate copy or synopsis of the patient's medical records including a copy of radiographs, if requested. A reasonable copying fee may be charged.

(14) Failure to provide records or radiographs in a timely manner to another veterinarian retained by the client, upon request of the client or client's veterinarian.

(15) Failure to mark or label a container of prescription or legend drugs with the date, name of drug, dosage frequency, identification of animal (if appropriate), and withdrawal time (if appropriate). Excludes legend drugs dispensed or ordered in original, unopened manufacturer's packaging for herd use.

(16) Failure to comply with federal law concerning packaging and labeling of prescription or legend drugs.

(17) Violation of any state or federal law relating to controlled substances, as defined in ORS 475.005(6), which the veterinarian obtained under the authority of the veterinary license.

(18) Failure to respond in writing to a written request from the Board within the time indicated in the request letter, without good cause; or failure to appear in person before the Board upon written request, without good cause.

(19) Failure to comply with any rule or Order of the Board or as required by OAR 875-005-0010.

(20) Making false or misleading representations to the Board or its representative or altering or providing altered medical records.

(21) Making a misrepresentation or omission on a license renewal application.

(22) Violations of veterinary laws in other states that would constitute violations of Oregon law.

(23) Violations of other laws that relate to the practice of veterinary medicine, including violations of the Oregon Racing Commission statutes and administrative rules.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.130

Hist.: VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 3-2008, f. & cert. ef. 3-19-08

Rule Caption: Allows Euthanasia Agencies to use a vendor or licensed Oregon veterinarian for employee euthanasia training.

Adm. Order No.: VMEB 4-2008(Temp)

Filed with Sec. of State: 4-11-2008

Certified to be Effective: 4-21-08 thru 10-18-08

Notice Publication Date:

Rules Amended: 875-020-0005

Subject: Allows animal control agencies and shelters certified as euthanasia agencies to obtain employee training in proper methods of animal euthanasia from private vendors or licensed Oregon veterinarians with prior approval by the Board.

Rules Coordinator: Lori V. Makinen—(971) 673-0224

875-020-0005

Exceptions

(1) A person who is not certified and is employed by an agency may administer a lethal drug under the direct supervision of a C.E.T. or Oregon licensed veterinarian until the next scheduled Task Force training session.

(2) Other drugs approved by the Board of Pharmacy for the purpose of euthanasia may also be submitted to the Board for approval. If approved by the Board, the drug may be used by C.E.T.'s.

(3) With prior approval by the Board, an agency may obtain euthanasia training, examination and certification for employees from a vendor or licensed Oregon veterinarian.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 475.190, 609.405, 686.255 & 686.510

Hist.: VME 1-1986(Temp), f. & ef. 7-21-86; VME 1-1989, f. 1-12-89, cert. ef. 2-1-89; VMEB 4-2008(Temp), f. 4-11-08, cert. ef. 4-21-08 thru 10-18-08

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101-015-0025	2-4-2008	Amend(T)	3-1-2008	115-040-0005	12-26-2007	Amend	2-1-2008
105-040-0015	3-1-2008	Adopt	4-1-2008	115-040-0030	1-1-2008	Amend	2-1-2008
105-040-0015(T)	3-1-2008	Repeal	4-1-2008	115-070-0000	12-26-2007	Amend	2-1-2008
110-010-0030	4-15-2008	Amend(T)	5-1-2008	115-070-0035	12-26-2007	Amend	2-1-2008
110-010-0034	4-15-2008	Adopt(T)	5-1-2008	123-001-0050	1-2-2008	Amend	2-1-2008
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110-010-0039	4-15-2008	Adopt(T)	5-1-2008	123-001-0300	1-2-2008	Amend	2-1-2008
110-010-0040	4-15-2008	Suspend	5-1-2008	123-001-0300	3-28-2008	Amend(T)	5-1-2008
110-010-0045	4-15-2008	Suspend	5-1-2008	123-001-0500	1-2-2008	Amend	2-1-2008
110-010-0050	4-15-2008	Suspend	5-1-2008	123-001-0500	3-28-2008	Amend(T)	5-1-2008
110-010-0055	4-15-2008	Suspend	5-1-2008	123-001-0520	1-2-2008	Amend	2-1-2008
110-010-0060	4-15-2008	Suspend	5-1-2008	123-001-0520	3-28-2008	Amend(T)	5-1-2008
110-040-0012	4-15-2008	Amend(T)	5-1-2008	123-001-0700	1-2-2008	Amend	2-1-2008
110-040-0014	4-15-2008	Amend(T)	5-1-2008	123-001-0700	3-28-2008	Amend(T)	5-1-2008
110-040-0015	4-15-2008	Suspend	5-1-2008	123-001-0725	1-2-2008	Amend	2-1-2008
110-040-0020	4-15-2008	Suspend	5-1-2008	123-001-0725	3-28-2008	Amend(T)	5-1-2008
111-001-0000	1-4-2008	Adopt	2-1-2008	123-001-0750	1-2-2008	Amend	2-1-2008
111-001-0005	1-4-2008	Adopt	2-1-2008	123-001-0750	3-28-2008	Amend(T)	5-1-2008
111-002-0005	1-4-2008	Adopt	2-1-2008	123-009-0060	1-2-2008	Amend	2-1-2008
111-002-0010	1-4-2008	Adopt	2-1-2008	123-009-0060	3-28-2008	Amend(T)	5-1-2008
111-005-0010	1-4-2008	Adopt	2-1-2008	123-009-0080	1-2-2008	Amend	2-1-2008
111-005-0015	1-4-2008	Adopt	2-1-2008	123-009-0080	3-28-2008	Amend(T)	5-1-2008
111-005-0020	1-4-2008	Adopt	2-1-2008	123-009-0090	1-2-2008	Amend	2-1-2008
111-005-0040	1-4-2008	Adopt	2-1-2008	123-009-0090	3-28-2008	Amend(T)	5-1-2008
111-005-0042	1-4-2008	Adopt	2-1-2008	123-011-0030	3-4-2008	Amend(T)	4-1-2008
111-005-0044	1-4-2008	Adopt	2-1-2008	123-011-0035	3-4-2008	Amend(T)	4-1-2008
111-005-0046	1-4-2008	Adopt	2-1-2008	123-011-0037	3-4-2008	Adopt(T)	4-1-2008
111-005-0048	1-4-2008	Adopt	2-1-2008	123-011-0040	3-4-2008	Amend(T)	4-1-2008
111-005-0050	1-4-2008	Adopt	2-1-2008	123-011-0045	3-4-2008	Amend(T)	4-1-2008
111-005-0060	1-4-2008	Adopt	2-1-2008	123-017-0008	2-26-2008	Amend(T)	4-1-2008
111-005-0070	1-4-2008	Adopt	2-1-2008	123-017-0010	2-26-2008	Amend(T)	4-1-2008
111-010-0015	1-4-2008	Adopt	2-1-2008	123-017-0015	2-26-2008	Amend(T)	4-1-2008
111-015-0001	2-19-2008	Adopt	4-1-2008	123-017-0020	2-26-2008	Amend(T)	4-1-2008
111-020-0001	4-1-2008	Adopt	5-1-2008	123-017-0025	2-26-2008	Amend(T)	4-1-2008
111-020-0005	1-4-2008	Adopt	2-1-2008	123-017-0030	2-26-2008	Amend(T)	4-1-2008
111-050-0001	4-15-2008	Adopt	5-1-2008	123-017-0035	2-26-2008	Amend(T)	4-1-2008
111-050-0010	4-15-2008	Adopt	5-1-2008	123-017-0055	2-26-2008	Amend(T)	4-1-2008
111-050-0015	4-15-2008	Adopt	5-1-2008	123-018-0010	3-4-2008	Amend(T)	4-1-2008
111-060-0001	4-1-2008	Adopt(T)	5-1-2008	123-018-0040	3-4-2008	Amend(T)	4-1-2008
115-010-0032	12-26-2007	Amend	2-1-2008	123-018-0060	3-4-2008	Amend(T)	4-1-2008
115-010-0115	12-26-2007	Amend	2-1-2008	123-018-0085	3-4-2008	Amend(T)	4-1-2008
115-025-0000	1-1-2008	Amend	2-1-2008	123-018-0100	3-4-2008	Amend(T)	4-1-2008
115-025-0010	1-1-2008	Amend	2-1-2008	123-018-0160	3-4-2008	Amend(T)	4-1-2008
115-025-0015	1-1-2008	Amend	2-1-2008	123-019-0020	2-26-2008	Amend(T)	4-1-2008
115-025-0020	1-1-2008	Amend	2-1-2008	123-019-0040	2-26-2008	Amend(T)	4-1-2008
115-025-0023	1-1-2008	Amend	2-1-2008	123-021-0010	2-26-2008	Amend(T)	4-1-2008
115-025-0025	1-1-2008	Amend	2-1-2008	123-021-0030	2-26-2008	Suspend	4-1-2008
115-025-0025	3-17-2008	Amend	4-1-2008	123-021-0050	2-26-2008	Amend(T)	4-1-2008
115-025-0030	1-1-2008	Amend	2-1-2008	123-021-0090	2-26-2008	Amend(T)	4-1-2008
115-025-0030	3-17-2008	Amend	4-1-2008	123-024-0001	3-20-2008	Amend(T)	5-1-2008
115-025-0035	1-1-2008	Amend	2-1-2008	123-024-0011	3-20-2008	Amend(T)	5-1-2008
115-025-0065	1-1-2008	Adopt	2-1-2008	123-024-0031	3-20-2008	Amend(T)	5-1-2008
115-025-0065	3-17-2008	Amend	4-1-2008	123-024-0041	3-20-2008	Suspend	5-1-2008
115-025-0070	1-1-2008	Adopt	2-1-2008	123-025-0010	12-7-2007	Amend(T)	1-1-2008
115-025-0075	1-1-2008	Adopt	2-1-2008	123-025-0012	12-7-2007	Amend(T)	1-1-2008

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123-025-0017	12-7-2007	Amend(T)	1-1-2008	125-145-0020	2-6-2008	Repeal	3-1-2008
123-025-0021	12-7-2007	Amend(T)	1-1-2008	125-145-0030	12-6-2007	Suspend	1-1-2008
123-025-0023	12-7-2007	Amend(T)	1-1-2008	125-145-0030	2-6-2008	Repeal	3-1-2008
123-025-0025	12-7-2007	Amend(T)	1-1-2008	125-145-0040	12-6-2007	Suspend	1-1-2008
123-025-0030	12-7-2007	Amend(T)	1-1-2008	125-145-0040	2-6-2008	Repeal	3-1-2008
123-042-0020	4-9-2008	Amend(T)	5-1-2008	125-145-0045	12-6-2007	Suspend	1-1-2008
123-042-0026	4-9-2008	Amend(T)	5-1-2008	125-145-0045	2-6-2008	Repeal	3-1-2008
123-042-0036	4-9-2008	Amend(T)	5-1-2008	125-145-0060	12-6-2007	Suspend	1-1-2008
123-043-0010	4-9-2008	Amend(T)	5-1-2008	125-145-0060	2-6-2008	Repeal	3-1-2008
123-043-0035	4-9-2008	Amend(T)	5-1-2008	125-145-0080	12-6-2007	Suspend	1-1-2008
123-043-0045	4-9-2008	Amend(T)	5-1-2008	125-145-0080	2-6-2008	Repeal	3-1-2008
123-043-0055	4-9-2008	Amend(T)	5-1-2008	125-145-0090	12-6-2007	Suspend	1-1-2008
123-043-0075	4-9-2008	Amend(T)	5-1-2008	125-145-0090	2-6-2008	Repeal	3-1-2008
123-055-0100	3-4-2008	Amend(T)	4-1-2008	125-145-0100	12-6-2007	Suspend	1-1-2008
123-055-0120	3-4-2008	Amend(T)	4-1-2008	125-145-0100	2-6-2008	Repeal	3-1-2008
123-055-0200	3-4-2008	Amend(T)	4-1-2008	125-145-0105	12-6-2007	Suspend	1-1-2008
123-055-0220	3-4-2008	Amend(T)	4-1-2008	125-145-0105	2-6-2008	Repeal	3-1-2008
123-055-0240	3-4-2008	Amend(T)	4-1-2008	125-246-0700	2-29-2008	Am. & Ren.	4-1-2008
123-055-0300	3-4-2008	Amend(T)	4-1-2008	125-246-0710	2-29-2008	Am. & Ren.	4-1-2008
123-055-0340	3-4-2008	Amend(T)	4-1-2008	125-246-0720	2-29-2008	Am. & Ren.	4-1-2008
123-055-0400	3-4-2008	Amend(T)	4-1-2008	125-246-0730	2-29-2008	Am. & Ren.	4-1-2008
123-055-0420	3-4-2008	Amend(T)	4-1-2008	137-009-0130	2-1-2008	Amend	3-1-2008
123-055-0440	3-4-2008	Amend(T)	4-1-2008	137-009-0140	2-1-2008	Amend	3-1-2008
123-055-0460	3-4-2008	Amend(T)	4-1-2008	137-009-0145	2-1-2008	Amend	3-1-2008
123-055-0525	3-4-2008	Amend(T)	4-1-2008	137-009-0147	2-1-2008	Adopt	3-1-2008
123-055-0620	3-4-2008	Amend(T)	4-1-2008	137-009-0150	2-1-2008	Amend	3-1-2008
123-055-0900	3-4-2008	Amend(T)	4-1-2008	137-009-0155	2-1-2008	Amend	3-1-2008
123-057-0110	3-4-2008	Amend(T)	4-1-2008	137-020-0015	1-2-2008	Amend	2-1-2008
123-057-0130	3-4-2008	Amend(T)	4-1-2008	137-020-0020	1-2-2008	Amend	2-1-2008
123-057-0150	3-4-2008	Amend(T)	4-1-2008	137-020-0040	1-2-2008	Amend	2-1-2008
123-057-0190	3-4-2008	Amend(T)	4-1-2008	137-020-0050	1-2-2008	Amend	2-1-2008
123-057-0210	3-4-2008	Amend(T)	4-1-2008	137-045-0010	1-1-2008	Amend	2-1-2008
123-057-0230	3-4-2008	Amend(T)	4-1-2008	137-045-0015	1-1-2008	Amend	2-1-2008
123-057-0310	3-4-2008	Suspend	4-1-2008	137-045-0020	1-1-2008	Amend	2-1-2008
123-057-0330	3-4-2008	Amend(T)	4-1-2008	137-045-0030	1-1-2008	Amend	2-1-2008
123-057-0350	3-4-2008	Amend(T)	4-1-2008	137-045-0035	1-1-2008	Amend	2-1-2008
123-057-0410	3-4-2008	Amend(T)	4-1-2008	137-045-0050	1-1-2008	Amend	2-1-2008
123-057-0430	3-4-2008	Amend(T)	4-1-2008	137-045-0055	1-1-2008	Amend	2-1-2008
123-057-0450	3-4-2008	Amend(T)	4-1-2008	137-045-0060	1-1-2008	Amend	2-1-2008
123-057-0470	3-4-2008	Amend(T)	4-1-2008	137-045-0070	1-1-2008	Amend	2-1-2008
123-057-0510	3-4-2008	Amend(T)	4-1-2008	137-045-0090	1-1-2008	Amend	2-1-2008
123-057-0530	3-4-2008	Amend(T)	4-1-2008	137-046-0100	1-1-2008	Amend	2-1-2008
123-057-0710	3-4-2008	Amend(T)	4-1-2008	137-046-0110	1-1-2008	Amend	2-1-2008
125-050-0200	2-29-2008	Adopt	4-1-2008	137-046-0130	1-1-2008	Amend	2-1-2008
125-125-0050	4-15-2008	Amend(T)	5-1-2008	137-047-0000	1-1-2008	Amend	2-1-2008
125-125-0100	4-15-2008	Amend(T)	5-1-2008	137-047-0100	1-1-2008	Amend	2-1-2008
125-125-0150	4-15-2008	Amend(T)	5-1-2008	137-047-0257	1-1-2008	Amend	2-1-2008
125-125-0250	4-15-2008	Amend(T)	5-1-2008	137-047-0262	1-1-2008	Amend	2-1-2008
125-125-0300	4-15-2008	Amend(T)	5-1-2008	137-047-0263	1-1-2008	Amend	2-1-2008
125-125-0350	4-15-2008	Amend(T)	5-1-2008	137-047-0275	1-1-2008	Amend	2-1-2008
125-125-0400	4-15-2008	Amend(T)	5-1-2008	137-047-0280	1-1-2008	Amend	2-1-2008
125-125-0500	4-15-2008	Adopt(T)	5-1-2008	137-047-0285	1-1-2008	Amend	2-1-2008
125-125-0600	4-15-2008	Adopt(T)	5-1-2008	137-047-0310	1-1-2008	Amend	2-1-2008
125-145-0010	12-6-2007	Suspend	1-1-2008	137-047-0330	1-1-2008	Amend	2-1-2008

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137-047-0430	1-1-2008	Amend	2-1-2008	137-060-0360	1-18-2008	Amend	3-1-2008
137-047-0575	1-1-2008	Amend	2-1-2008	137-060-0400	1-18-2008	Amend	3-1-2008
137-047-0610	1-1-2008	Amend	2-1-2008	137-060-0410	1-18-2008	Amend	3-1-2008
137-047-0730	1-1-2008	Amend	2-1-2008	137-060-0430	1-18-2008	Amend	3-1-2008
137-048-0100	1-1-2008	Amend	2-1-2008	137-060-0440	1-18-2008	Amend	3-1-2008
137-048-0130	1-1-2008	Amend	2-1-2008	137-060-0450	1-18-2008	Amend	3-1-2008
137-048-0200	1-1-2008	Amend	2-1-2008	137-079-0170	4-1-2008	Amend	5-1-2008
137-048-0210	1-1-2008	Amend	2-1-2008	137-079-0200	4-1-2008	Amend	5-1-2008
137-048-0220	1-1-2008	Amend	2-1-2008	137-084-0001	12-11-2007	Amend	1-1-2008
137-048-0240	1-1-2008	Amend	2-1-2008	137-084-0005	12-11-2007	Amend	1-1-2008
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137-048-0320	1-1-2008	Amend	2-1-2008	137-084-0500	12-11-2007	Amend	1-1-2008
137-049-0100	1-1-2008	Amend	2-1-2008	141-085-0005	1-1-2008	Amend	1-1-2008
137-049-0140	1-1-2008	Amend	2-1-2008	141-085-0006	1-1-2008	Amend	1-1-2008
137-049-0150	1-1-2008	Amend	2-1-2008	141-085-0010	1-1-2008	Amend	1-1-2008
137-049-0160	1-1-2008	Amend	2-1-2008	141-085-0015	1-1-2008	Amend	1-1-2008
137-049-0200	1-1-2008	Amend	2-1-2008	141-085-0018	1-1-2008	Amend	1-1-2008
137-049-0210	1-1-2008	Amend	2-1-2008	141-085-0020	1-1-2008	Amend	1-1-2008
137-049-0280	1-1-2008	Amend	2-1-2008	141-085-0021	1-1-2008	Repeal	1-1-2008
137-049-0290	1-1-2008	Amend	2-1-2008	141-085-0022	1-1-2008	Amend	1-1-2008
137-049-0310	1-1-2008	Amend	2-1-2008	141-085-0023	1-1-2008	Amend	1-1-2008
137-049-0390	1-1-2008	Amend	2-1-2008	141-085-0025	1-1-2008	Amend	1-1-2008
137-049-0395	1-1-2008	Amend	2-1-2008	141-085-0028	1-1-2008	Amend	1-1-2008
137-049-0630	1-1-2008	Amend	2-1-2008	141-085-0029	1-1-2008	Amend	1-1-2008
137-049-0645	1-1-2008	Amend	2-1-2008	141-085-0034	1-1-2008	Amend	1-1-2008
137-049-0860	1-1-2008	Amend	2-1-2008	141-085-0036	1-1-2008	Amend	1-1-2008
137-055-3020	1-2-2008	Amend(T)	2-1-2008	141-085-0064	1-1-2008	Amend	1-1-2008
137-055-3020	4-1-2008	Amend	5-1-2008	141-085-0066	1-1-2008	Amend	1-1-2008
137-055-3060	1-2-2008	Amend(T)	2-1-2008	141-085-0068	1-1-2008	Adopt	1-1-2008
137-055-3060	4-1-2008	Amend	5-1-2008	141-085-0070	1-1-2008	Amend	1-1-2008
137-055-3080	1-2-2008	Amend(T)	2-1-2008	141-085-0075	1-1-2008	Amend	1-1-2008
137-055-3080	4-1-2008	Amend	5-1-2008	141-085-0079	1-1-2008	Amend	1-1-2008
137-055-3100	1-2-2008	Amend(T)	2-1-2008	141-085-0085	1-1-2008	Amend	1-1-2008
137-055-3100	4-1-2008	Amend	5-1-2008	141-085-0090	1-1-2008	Amend	1-1-2008
137-055-3140	1-2-2008	Amend(T)	2-1-2008	141-085-0095	1-1-2008	Amend	1-1-2008
137-055-3140	4-1-2008	Amend	5-1-2008	141-085-0096	1-1-2008	Amend	1-1-2008
137-055-4560	4-1-2008	Amend	5-1-2008	141-085-0115	1-1-2008	Amend	1-1-2008
137-055-4620	1-2-2008	Amend	2-1-2008	141-085-0121	1-1-2008	Amend	1-1-2008
137-060-0100	1-18-2008	Amend	3-1-2008	141-085-0126	1-1-2008	Amend	1-1-2008
137-060-0110	1-18-2008	Amend	3-1-2008	141-085-0131	1-1-2008	Amend	1-1-2008
137-060-0130	1-18-2008	Amend	3-1-2008	141-085-0136	1-1-2008	Amend	1-1-2008
137-060-0140	1-18-2008	Amend	3-1-2008	141-085-0141	1-1-2008	Amend	1-1-2008
137-060-0150	1-18-2008	Amend	3-1-2008	141-085-0146	1-1-2008	Amend	1-1-2008
137-060-0160	1-18-2008	Amend	3-1-2008	141-085-0156	1-1-2008	Amend	1-1-2008
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137-060-0210	1-18-2008	Amend	3-1-2008	141-085-0166	1-1-2008	Amend	1-1-2008
137-060-0230	1-18-2008	Amend	3-1-2008	141-085-0171	1-1-2008	Amend	1-1-2008
137-060-0240	1-18-2008	Amend	3-1-2008	141-085-0176	1-1-2008	Amend	1-1-2008
137-060-0250	1-18-2008	Amend	3-1-2008	141-085-0256	1-1-2008	Amend	1-1-2008
137-060-0260	1-18-2008	Amend	3-1-2008	141-085-0257	1-1-2008	Amend	1-1-2008
137-060-0300	1-18-2008	Amend	3-1-2008	141-085-0421	1-1-2008	Amend	1-1-2008
137-060-0310	1-18-2008	Amend	3-1-2008	141-085-0425	1-1-2008	Amend	1-1-2008
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141-089-0105	1-1-2008	Amend	1-1-2008	141-089-0607	1-1-2008	Adopt	1-1-2008
141-089-0110	1-1-2008	Amend	1-1-2008	141-090-0005	1-1-2008	Amend	1-1-2008
141-089-0115	1-1-2008	Amend	1-1-2008	141-090-0010	1-1-2008	Amend	1-1-2008
141-089-0120	1-1-2008	Amend	1-1-2008	141-090-0015	1-1-2008	Amend	1-1-2008
141-089-0135	1-1-2008	Amend	1-1-2008	141-090-0020	1-1-2008	Amend	1-1-2008
141-089-0140	1-1-2008	Amend	1-1-2008	141-090-0025	1-1-2008	Amend	1-1-2008
141-089-0150	1-1-2008	Amend	1-1-2008	141-090-0030	1-1-2008	Amend	1-1-2008
141-089-0155	1-1-2008	Amend	1-1-2008	141-090-0032	1-1-2008	Adopt	1-1-2008
141-089-0157	1-1-2008	Adopt	1-1-2008	141-090-0035	1-1-2008	Amend	1-1-2008
141-089-0170	1-1-2008	Amend	1-1-2008	141-090-0040	1-1-2008	Amend	1-1-2008
141-089-0175	1-1-2008	Amend	1-1-2008	141-090-0045	1-1-2008	Amend	1-1-2008
141-089-0180	1-1-2008	Amend	1-1-2008	141-090-0050	1-1-2008	Amend	1-1-2008
141-089-0185	1-1-2008	Amend	1-1-2008	141-090-0055	1-1-2008	Amend	1-1-2008
141-089-0190	1-1-2008	Amend	1-1-2008	141-102-0000	1-1-2008	Amend	1-1-2008
141-089-0192	1-1-2008	Adopt	1-1-2008	141-102-0020	1-1-2008	Amend	1-1-2008
141-089-0205	1-1-2008	Amend	1-1-2008	141-102-0030	1-1-2008	Amend	1-1-2008
141-089-0215	1-1-2008	Amend	1-1-2008	141-102-0045	1-1-2008	Repeal	1-1-2008
141-089-0225	1-1-2008	Amend	1-1-2008	142-010-0010	4-14-2008	Amend	5-1-2008
141-089-0230	1-1-2008	Amend	1-1-2008	142-010-0020	4-14-2008	Amend	5-1-2008
141-089-0245	1-1-2008	Amend	1-1-2008	142-010-0045	4-14-2008	Amend	5-1-2008
141-089-0260	1-1-2008	Amend	1-1-2008	142-015-0000	4-14-2008	Adopt	5-1-2008
141-089-0265	1-1-2008	Amend	1-1-2008	142-015-0010	4-14-2008	Adopt	5-1-2008
141-089-0280	1-1-2008	Amend	1-1-2008	142-015-0020	4-14-2008	Adopt	5-1-2008
141-089-0285	1-1-2008	Amend	1-1-2008	142-015-0030	4-14-2008	Adopt	5-1-2008
141-089-0290	1-1-2008	Amend	1-1-2008	142-015-0040	4-14-2008	Adopt	5-1-2008
141-089-0295	1-1-2008	Amend	1-1-2008	142-015-0050	4-14-2008	Adopt	5-1-2008
141-089-0300	1-1-2008	Amend	1-1-2008	150-118.005	1-1-2008	Repeal	2-1-2008
141-089-0302	1-1-2008	Adopt	1-1-2008	150-18.385-(A)	1-1-2008	Amend	2-1-2008
141-089-0350	5-1-2008	Adopt	5-1-2008	150-293.250(2)	2-15-2008	Amend	3-1-2008
141-089-0355	5-1-2008	Adopt	5-1-2008	150-305.145(3)	1-1-2008	Amend	2-1-2008
141-089-0360	5-1-2008	Adopt	5-1-2008	150-305.220(2)	1-1-2008	Amend	2-1-2008
141-089-0365	5-1-2008	Adopt	5-1-2008	150-305.270(10)	1-1-2008	Amend	2-1-2008
141-089-0370	5-1-2008	Adopt	5-1-2008	150-305.270(4)-(A)	1-1-2008	Amend	2-1-2008
141-089-0375	5-1-2008	Adopt	5-1-2008	150-305.992	1-1-2008	Amend	2-1-2008
141-089-0380	5-1-2008	Adopt	5-1-2008	150-307.262(2)	1-1-2008	Repeal	2-1-2008
141-089-0385	5-1-2008	Adopt	5-1-2008	150-309.115(1)-(A)	1-1-2008	Repeal	2-1-2008
141-089-0390	5-1-2008	Adopt	5-1-2008	150-311.676	1-1-2008	Amend	2-1-2008
141-089-0400	1-1-2008	Amend	1-1-2008	150-311.676-(B)	1-1-2008	Repeal	2-1-2008
141-089-0405	1-1-2008	Amend	1-1-2008	150-311.684	1-1-2008	Amend	2-1-2008
141-089-0415	1-1-2008	Amend	1-1-2008	150-311.689	1-1-2008	Amend	2-1-2008
141-089-0420	1-1-2008	Amend	1-1-2008	150-311.806-(A)	1-1-2008	Amend	2-1-2008
141-089-0423	1-1-2008	Adopt	1-1-2008	150-314.258	1-1-2008	Adopt	2-1-2008
141-089-0500	1-1-2008	Amend	1-1-2008	150-314.280-(E)	1-1-2008	Amend	2-1-2008
141-089-0505	1-1-2008	Amend	1-1-2008	150-314.280-(G)	1-1-2008	Amend	2-1-2008
141-089-0515	1-1-2008	Amend	1-1-2008	150-314.280-(H)	1-1-2008	Amend	2-1-2008
141-089-0520	1-1-2008	Amend	1-1-2008	150-314.280-(I)	1-1-2008	Amend	2-1-2008
141-089-0550	1-1-2008	Amend	1-1-2008	150-314.280-(J)	1-1-2008	Amend	2-1-2008
141-089-0555	1-1-2008	Amend	1-1-2008	150-314.280-(K)	1-1-2008	Amend	2-1-2008
141-089-0560	1-1-2008	Amend	1-1-2008	150-314.280-(L)	1-1-2008	Amend	2-1-2008
141-089-0565	1-1-2008	Amend	1-1-2008	150-314.308	1-1-2008	Adopt	2-1-2008
141-089-0570	1-1-2008	Amend	1-1-2008	150-314.415.(7)	1-1-2008	Amend	2-1-2008
141-089-0572	1-1-2008	Adopt	1-1-2008	150-314.425-(B)	1-1-2008	Adopt	2-1-2008
141-089-0585	1-1-2008	Amend	1-1-2008	150-314.615-(D)	1-1-2008	Amend	2-1-2008
141-089-0595	1-1-2008	Amend	1-1-2008	150-314.615-(E)	1-1-2008	Amend	2-1-2008
141-089-0600	1-1-2008	Amend	1-1-2008	150-315.262	1-1-2008	Amend	2-1-2008

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150-316.127-(E)	1-1-2008	Amend	2-1-2008	165-014-0280	12-3-2007	Adopt	1-1-2008
150-316.127(10)	1-1-2008	Adopt	2-1-2008	165-020-0005	12-31-2007	Amend	2-1-2008
150-317.092	1-1-2008	Adopt	2-1-2008	165-020-0020	12-31-2007	Amend	2-1-2008
150-317.705(3)(a)	1-1-2008	Amend	2-1-2008	165-020-0021	12-31-2007	Adopt	2-1-2008
150-317.705(3)(b)	1-1-2008	Amend	2-1-2008	165-020-0035	12-31-2007	Amend	2-1-2008
150-321.307(4)	1-1-2008	Repeal	2-1-2008	165-020-0045	12-31-2007	Repeal	2-1-2008
150-321.485(4)	1-1-2008	Repeal	2-1-2008	165-020-0050	12-31-2007	Amend	2-1-2008
150-323.320(1)(b)	2-4-2008	Adopt(T)	3-1-2008	165-020-0055	12-31-2007	Amend	2-1-2008
151-001-0005	12-13-2007	Amend(T)	1-1-2008	165-020-2021	2-21-2008	Adopt(T)	4-1-2008
151-001-0005	4-14-2008	Amend	5-1-2008	165-021-0000	12-31-2007	Repeal	2-1-2008
151-001-0010	12-13-2007	Amend(T)	1-1-2008	165-021-0005	12-31-2007	Repeal	2-1-2008
151-001-0010	4-14-2008	Amend	5-1-2008	165-021-0010	12-31-2007	Repeal	2-1-2008
151-001-0015	4-14-2008	Amend	5-1-2008	165-100-0000	4-1-2008	Adopt(T)	5-1-2008
151-020-0045	12-13-2007	Amend(T)	1-1-2008	165-100-0005	4-1-2008	Adopt(T)	5-1-2008
151-020-0045	4-14-2008	Amend	5-1-2008	165-100-0010	4-1-2008	Adopt(T)	5-1-2008
160-005-0005	5-1-2008	Amend	5-1-2008	165-100-0015	4-1-2008	Adopt(T)	5-1-2008
160-005-0007	5-1-2008	Adopt	5-1-2008	165-100-0020	4-1-2008	Adopt(T)	5-1-2008
160-005-0010	5-1-2008	Amend	5-1-2008	165-100-0025	4-1-2008	Adopt(T)	5-1-2008
160-010-0600	1-1-2008	Adopt	1-1-2008	165-100-0030	4-1-2008	Adopt(T)	5-1-2008
160-010-0610	1-1-2008	Adopt	1-1-2008	166-400-0010	1-30-2008	Amend	3-1-2008
160-010-0620	1-1-2008	Adopt	1-1-2008	166-500-0015	11-29-2007	Amend	1-1-2008
160-010-0630	1-1-2008	Adopt	1-1-2008	170-002-0010	3-3-2008	Adopt	4-1-2008
160-050-0180	1-15-2008	Amend	2-1-2008	170-061-0200	12-27-2007	Adopt	2-1-2008
160-050-0190	1-15-2008	Amend	2-1-2008	170-071-0005	11-20-2007	Amend(T)	1-1-2008
160-050-0200	1-15-2008	Amend	2-1-2008	177-046-0110	3-31-2008	Amend	5-1-2008
160-050-0210	1-15-2008	Amend	2-1-2008	177-046-0110(T)	3-31-2008	Repeal	5-1-2008
160-050-0215	1-15-2008	Adopt	2-1-2008	177-046-0170	3-31-2008	Amend	5-1-2008
160-050-0220	1-15-2008	Amend	2-1-2008	177-046-0170(T)	3-31-2008	Repeal	5-1-2008
160-050-0230	1-15-2008	Amend	2-1-2008	177-050-0002	3-31-2008	Amend	5-1-2008
160-050-0240	1-15-2008	Amend	2-1-2008	177-050-0002(T)	3-31-2008	Repeal	5-1-2008
160-050-0250	1-15-2008	Amend	2-1-2008	177-050-0020	3-31-2008	Amend	5-1-2008
160-050-0280	1-15-2008	Amend	2-1-2008	177-050-0020(T)	3-31-2008	Repeal	5-1-2008
160-100-0200	1-15-2008	Amend	1-1-2008	177-050-0024	3-31-2008	Amend	5-1-2008
160-100-0210	5-1-2008	Amend	5-1-2008	177-050-0024(T)	3-31-2008	Repeal	5-1-2008
165-002-0020	12-31-2007	Amend	2-1-2008	177-050-0025	3-31-2008	Amend	5-1-2008
165-004-0005	12-31-2007	Amend	2-1-2008	177-050-0025(T)	3-31-2008	Repeal	5-1-2008
165-004-0020	12-31-2007	Amend	2-1-2008	177-050-0027	3-31-2008	Amend	5-1-2008
165-005-0130	12-31-2007	Amend	2-1-2008	177-050-0027(T)	3-31-2008	Repeal	5-1-2008
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165-010-0005	12-31-2007	Amend	2-1-2008	177-050-0037(T)	3-31-2008	Repeal	5-1-2008
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165-012-0005	12-31-2007	Amend	2-1-2008	177-050-0070(T)	3-31-2008	Repeal	5-1-2008
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165-013-0010	12-31-2007	Amend	2-1-2008	199-005-0010	3-7-2008	Adopt	4-1-2008
165-013-0020	12-31-2007	Amend	2-1-2008	199-005-0015	3-7-2008	Adopt	4-1-2008
165-014-0005	12-31-2007	Amend	2-1-2008	199-005-0020	3-7-2008	Adopt	4-1-2008
165-014-0027	12-31-2007	Repeal	2-1-2008	199-005-0025	3-7-2008	Adopt	4-1-2008
165-014-0030	12-31-2007	Amend	2-1-2008	199-005-0030	3-7-2008	Adopt	4-1-2008
165-014-0031	12-31-2007	Adopt	2-1-2008	199-005-0035	3-7-2008	Adopt	4-1-2008
165-014-0032	12-31-2007	Adopt	2-1-2008	199-010-0068	1-2-2008	Adopt(T)	2-1-2008
165-014-0100	12-31-2007	Adopt	2-1-2008	199-010-0075	3-7-2008	Amend(T)	4-1-2008
165-014-0100	3-14-2008	Amend(T)	4-1-2008	199-010-0095	3-7-2008	Amend(T)	4-1-2008
165-014-0110	12-31-2007	Amend	2-1-2008	199-020-0005	3-7-2008	Suspend	4-1-2008
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213-017-0002	1-1-2008	Amend	2-1-2008	274-030-0520	1-1-2008	Amend	2-1-2008
213-017-0003	1-1-2008	Amend	2-1-2008	274-030-0520(T)	1-1-2008	Repeal	2-1-2008
213-017-0004	1-1-2008	Amend	2-1-2008	274-030-0535	1-1-2008	Amend	2-1-2008
213-017-0006	1-1-2008	Amend	2-1-2008	274-030-0545	1-1-2008	Amend	2-1-2008
213-017-0007	1-1-2008	Amend	2-1-2008	274-030-0545(T)	1-1-2008	Repeal	2-1-2008
213-017-0008	1-1-2008	Amend	2-1-2008	274-030-0550	1-1-2008	Amend	2-1-2008
213-017-0009	1-1-2008	Amend	2-1-2008	274-030-0550(T)	1-1-2008	Repeal	2-1-2008
213-017-0010	1-1-2008	Amend	2-1-2008	274-030-0555	1-1-2008	Amend	2-1-2008
213-018-0050	1-1-2008	Amend	2-1-2008	274-030-0555(T)	1-1-2008	Repeal	2-1-2008
213-018-0068	1-1-2008	Adopt	2-1-2008	274-030-0560	1-1-2008	Amend	2-1-2008
230-140-0000	1-29-2008	Adopt(T)	3-1-2008	274-030-0560(T)	1-1-2008	Repeal	2-1-2008
230-140-0010	1-29-2008	Adopt(T)	3-1-2008	274-030-0565	1-1-2008	Amend	2-1-2008
230-140-0020	1-29-2008	Adopt(T)	3-1-2008	274-030-0565(T)	1-1-2008	Repeal	2-1-2008
230-140-0030	1-29-2008	Adopt(T)	3-1-2008	274-030-0570	1-1-2008	Amend	2-1-2008
230-140-0040	1-29-2008	Adopt(T)	3-1-2008	274-030-0570(T)	1-1-2008	Repeal	2-1-2008
250-010-0075	12-10-2007	Adopt(T)	1-1-2008	274-030-0575	1-1-2008	Amend	2-1-2008
250-010-0075	5-1-2008	Adopt	5-1-2008	274-030-0575(T)	1-1-2008	Repeal	2-1-2008
250-010-0075(T)	5-1-2008	Repeal	5-1-2008	274-030-0600	1-1-2008	Amend	2-1-2008
250-020-0102	4-26-2008	Amend	5-1-2008	274-030-0600(T)	1-1-2008	Repeal	2-1-2008
250-020-0221	1-15-2008	Amend	2-1-2008	274-030-0602	1-1-2008	Adopt	2-1-2008
255-060-0011	1-11-2008	Amend	2-1-2008	274-030-0602(T)	1-1-2008	Repeal	2-1-2008
255-070-0003	4-9-2008	Amend	5-1-2008	274-030-0605	1-1-2008	Repeal	2-1-2008
259-008-0010	1-15-2008	Amend(T)	2-1-2008	274-030-0610	1-1-2008	Amend	2-1-2008
259-008-0010	4-15-2008	Amend	5-1-2008	274-030-0610(T)	1-1-2008	Repeal	2-1-2008
259-008-0010(T)	1-15-2008	Suspend	2-1-2008	274-030-0620	1-1-2008	Amend	2-1-2008
259-008-0010(T)	4-15-2008	Repeal	5-1-2008	274-030-0620(T)	1-1-2008	Repeal	2-1-2008
259-008-0011	4-15-2008	Amend	5-1-2008	274-030-0630	1-1-2008	Amend	2-1-2008
259-008-0060	1-15-2008	Amend	2-1-2008	274-030-0630(T)	1-1-2008	Repeal	2-1-2008
259-009-0070	1-15-2008	Amend	2-1-2008	274-030-0640	1-1-2008	Amend	2-1-2008
259-060-0010	4-15-2008	Amend	5-1-2008	274-030-0640(T)	1-1-2008	Repeal	2-1-2008
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259-060-0130	4-15-2008	Amend	5-1-2008	291-011-0010	4-1-2008	Amend(T)	5-1-2008
259-060-0135	4-15-2008	Amend	5-1-2008	291-026-0005	3-4-2008	Amend(T)	4-1-2008
259-060-0450	4-15-2008	Amend	5-1-2008	291-026-0010	3-4-2008	Amend(T)	4-1-2008
259-060-0500	4-15-2008	Amend	5-1-2008	291-026-0015	3-4-2008	Amend(T)	4-1-2008
259-061-0015	4-15-2008	Amend	5-1-2008	291-026-0025	3-4-2008	Amend(T)	4-1-2008
274-001-0005	3-25-2008	Amend	5-1-2008	291-026-0030	3-4-2008	Suspend	4-1-2008
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274-012-0100	1-7-2008	Amend(T)	2-1-2008	291-026-0095	3-4-2008	Suspend	4-1-2008
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274-015-0005	2-22-2008	Repeal	4-1-2008	291-026-0140	3-4-2008	Adopt(T)	4-1-2008
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274-030-0505	1-1-2008	Amend	2-1-2008	291-041-0020	2-4-2008	Amend	3-1-2008
274-030-0505(T)	1-1-2008	Repeal	2-1-2008	291-041-0030	2-4-2008	Amend	3-1-2008
274-030-0506	1-1-2008	Amend	2-1-2008	291-041-0035	2-4-2008	Amend	3-1-2008
274-030-0506(T)	1-1-2008	Repeal	2-1-2008	291-041-0040	2-4-2008	Repeal	3-1-2008
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291-069-0031	12-1-2007	Suspend	1-1-2008	291-164-0015	3-4-2008	Amend(T)	4-1-2008
291-069-0040	12-1-2007	Suspend	1-1-2008	291-164-0020	3-4-2008	Amend(T)	4-1-2008
291-069-0050	12-1-2007	Suspend	1-1-2008	291-164-0025	3-4-2008	Amend(T)	4-1-2008
291-069-0060	12-1-2007	Suspend	1-1-2008	291-164-0030	3-4-2008	Amend(T)	4-1-2008
291-069-0070	12-1-2007	Suspend	1-1-2008	291-164-0045	3-4-2008	Suspend	4-1-2008
291-069-0090	12-1-2007	Suspend	1-1-2008	291-164-0050	3-4-2008	Adopt(T)	4-1-2008
291-069-0100	12-1-2007	Suspend	1-1-2008	309-011-0100	12-5-2007	Adopt(T)	1-1-2008
291-069-0200	12-1-2007	Adopt(T)	1-1-2008	309-011-0100	2-12-2008	Suspend	3-1-2008
291-069-0210	12-1-2007	Adopt(T)	1-1-2008	309-031-0215	12-1-2007	Amend(T)	1-1-2008
291-069-0220	12-1-2007	Adopt(T)	1-1-2008	309-032-0455	12-11-2007	Amend	1-1-2008
291-069-0230	12-1-2007	Adopt(T)	1-1-2008	309-032-1095	4-15-2008	Adopt	5-1-2008
291-069-0240	12-1-2007	Adopt(T)	1-1-2008	309-032-1190	1-1-2008	Amend(T)	2-1-2008
291-069-0250	12-1-2007	Adopt(T)	1-1-2008	309-033-0735	1-1-2008	Adopt(T)	2-1-2008
291-069-0260	12-1-2007	Adopt(T)	1-1-2008	309-114-0000	12-1-2007	Amend(T)	1-1-2008
291-069-0270	12-1-2007	Adopt(T)	1-1-2008	309-114-0000	4-7-2008	Amend(T)	5-1-2008
291-069-0280	12-1-2007	Adopt(T)	1-1-2008	309-114-0000(T)	4-7-2008	Suspend	5-1-2008
291-070-0005	4-10-2008	Am. & Ren.	5-1-2008	309-114-0005	12-1-2007	Amend(T)	1-1-2008
291-070-0010	4-10-2008	Am. & Ren.	5-1-2008	309-114-0005	4-7-2008	Amend(T)	5-1-2008
291-070-0015	4-10-2008	Repeal	5-1-2008	309-114-0005(T)	4-7-2008	Suspend	5-1-2008
291-070-0020	4-10-2008	Repeal	5-1-2008	309-114-0010	12-1-2007	Amend(T)	1-1-2008
291-070-0025	4-10-2008	Repeal	5-1-2008	309-114-0010	4-7-2008	Amend(T)	5-1-2008
291-070-0026	4-10-2008	Repeal	5-1-2008	309-114-0010(T)	4-7-2008	Suspend	5-1-2008
291-070-0027	4-10-2008	Repeal	5-1-2008	309-114-0015	12-1-2007	Amend(T)	1-1-2008
291-070-0028	4-10-2008	Repeal	5-1-2008	309-114-0015	4-7-2008	Amend(T)	5-1-2008
291-070-0030	4-10-2008	Repeal	5-1-2008	309-114-0015(T)	4-7-2008	Suspend	5-1-2008
291-070-0035	4-10-2008	Repeal	5-1-2008	309-114-0020	12-1-2007	Amend(T)	1-1-2008
291-070-0041	4-10-2008	Repeal	5-1-2008	309-114-0020	4-7-2008	Amend(T)	5-1-2008
291-070-0043	4-10-2008	Repeal	5-1-2008	309-114-0020(T)	4-7-2008	Suspend	5-1-2008
291-070-0045	4-10-2008	Repeal	5-1-2008	309-114-0025	12-1-2007	Amend(T)	1-1-2008
291-070-0050	4-10-2008	Repeal	5-1-2008	309-114-0025	4-7-2008	Amend(T)	5-1-2008
291-070-0055	4-10-2008	Repeal	5-1-2008	309-114-0025(T)	4-7-2008	Suspend	5-1-2008
291-070-0056	4-10-2008	Repeal	5-1-2008	309-114-0030	4-7-2008	Adopt(T)	5-1-2008
291-070-0080	4-10-2008	Repeal	5-1-2008	309-118-0015	12-1-2007	Amend(T)	1-1-2008
291-070-0115	4-10-2008	Adopt	5-1-2008	325-001-0000	4-14-2008	Adopt	5-1-2008
291-070-0120	4-10-2008	Adopt	5-1-2008	325-001-0001	4-14-2008	Amend	5-1-2008
291-070-0125	4-10-2008	Adopt	5-1-2008	330-007-0200	12-13-2007	Adopt	1-1-2008
291-070-0130	4-10-2008	Adopt	5-1-2008	330-007-0210	12-13-2007	Adopt	1-1-2008
291-070-0135	4-10-2008	Adopt	5-1-2008	330-007-0220	12-13-2007	Adopt	1-1-2008
291-070-0140	4-10-2008	Adopt	5-1-2008	330-007-0230	12-13-2007	Adopt	1-1-2008
291-127-0210	4-1-2008	Amend(T)	5-1-2008	330-007-0240	12-13-2007	Adopt	1-1-2008
291-127-0260	4-1-2008	Amend(T)	5-1-2008	330-007-0250	12-13-2007	Adopt	1-1-2008
291-131-0010	1-25-2008	Amend	3-1-2008	330-007-0260	12-13-2007	Adopt	1-1-2008
291-131-0015	1-25-2008	Amend	3-1-2008	330-007-0270	12-13-2007	Adopt	1-1-2008
291-131-0020	1-25-2008	Amend	3-1-2008	330-007-0280	12-13-2007	Adopt	1-1-2008
291-131-0025	1-25-2008	Amend	3-1-2008	330-007-0290	12-13-2007	Adopt	1-1-2008
291-131-0030	1-25-2008	Amend	3-1-2008	330-007-0300	12-13-2007	Adopt	1-1-2008
291-131-0035	1-25-2008	Amend	3-1-2008	330-007-0310	12-13-2007	Adopt	1-1-2008
291-131-0037	1-25-2008	Amend	3-1-2008	330-007-0320	12-13-2007	Adopt	1-1-2008
291-133-0005	4-1-2008	Amend(T)	5-1-2008	330-007-0330	12-13-2007	Adopt	1-1-2008
291-133-0010	4-1-2008	Amend(T)	5-1-2008	330-070-0010	12-1-2007	Amend	1-1-2008
291-133-0015	4-1-2008	Amend(T)	5-1-2008	330-070-0013	12-1-2007	Amend	1-1-2008
291-133-0025	4-1-2008	Amend(T)	5-1-2008	330-070-0014	12-1-2007	Amend	1-1-2008
291-133-0035	4-1-2008	Amend(T)	5-1-2008	330-070-0021	12-1-2007	Amend	1-1-2008
291-133-0045	4-1-2008	Suspend	5-1-2008	330-070-0022	12-1-2007	Amend	1-1-2008

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330-070-0026	12-1-2007	Amend	1-1-2008	331-810-0040	3-15-2008	Adopt(T)	4-1-2008
330-070-0048	12-1-2007	Amend	1-1-2008	331-820-0010	3-15-2008	Adopt(T)	4-1-2008
330-070-0059	12-1-2007	Amend	1-1-2008	331-820-0020	3-15-2008	Adopt(T)	4-1-2008
330-070-0060	12-1-2007	Amend	1-1-2008	331-850-0010	3-15-2008	Adopt(T)	4-1-2008
330-070-0064	12-1-2007	Amend	1-1-2008	333-008-0000	1-1-2008	Amend	2-1-2008
330-070-0073	12-1-2007	Amend	1-1-2008	333-008-0010	1-1-2008	Amend	2-1-2008
330-070-0089	12-1-2007	Amend	1-1-2008	333-008-0020	1-1-2008	Amend	2-1-2008
330-070-0091	12-1-2007	Amend	1-1-2008	333-008-0025	1-1-2008	Amend	2-1-2008
330-070-0097	12-1-2007	Amend	1-1-2008	333-008-0030	1-1-2008	Amend	2-1-2008
330-090-0105	12-1-2007	Amend	1-1-2008	333-008-0040	1-1-2008	Amend	2-1-2008
330-090-0105	3-21-2008	Amend	5-1-2008	333-008-0050	1-1-2008	Amend	2-1-2008
330-090-0110	12-1-2007	Amend	1-1-2008	333-008-0060	1-1-2008	Amend	2-1-2008
330-090-0110	3-21-2008	Amend	5-1-2008	333-008-0070	1-1-2008	Amend	2-1-2008
330-090-0120	12-1-2007	Amend	1-1-2008	333-008-0080	1-1-2008	Amend	2-1-2008
330-090-0120	3-21-2008	Amend	5-1-2008	333-008-0090	1-1-2008	Amend	2-1-2008
330-090-0130	12-1-2007	Amend	1-1-2008	333-008-0110	1-1-2008	Amend	2-1-2008
330-090-0130	3-21-2008	Amend	5-1-2008	333-008-0120	1-1-2008	Amend	2-1-2008
330-090-0135	12-1-2007	Amend	1-1-2008	333-049-0010	3-17-2008	Amend	5-1-2008
330-090-0140	12-1-2007	Amend	1-1-2008	333-049-0020	3-17-2008	Amend	5-1-2008
330-090-0140	3-21-2008	Amend	5-1-2008	333-049-0030	3-17-2008	Amend	5-1-2008
330-090-0150	12-1-2007	Amend	1-1-2008	333-049-0040	3-17-2008	Amend	5-1-2008
330-090-0150	3-21-2008	Amend	5-1-2008	333-049-0050	3-17-2008	Amend	5-1-2008
330-092-0005	3-1-2008	Adopt	4-1-2008	333-049-0060	3-17-2008	Amend	5-1-2008
330-092-0010	3-1-2008	Adopt	4-1-2008	333-049-0065	3-17-2008	Amend	5-1-2008
330-092-0015	3-1-2008	Adopt	4-1-2008	333-049-0070	3-17-2008	Amend	5-1-2008
330-092-0020	3-1-2008	Adopt	4-1-2008	333-049-0080	3-17-2008	Amend	5-1-2008
330-092-0025	3-1-2008	Adopt	4-1-2008	333-049-0090	3-17-2008	Amend	5-1-2008
330-092-0030	3-1-2008	Adopt	4-1-2008	333-049-0110	3-17-2008	Repeal	5-1-2008
330-092-0035	3-1-2008	Adopt	4-1-2008	333-049-0120	3-17-2008	Amend	5-1-2008
330-092-0040	3-1-2008	Adopt	4-1-2008	333-050-0010	3-17-2008	Amend	5-1-2008
330-092-0045	3-1-2008	Adopt	4-1-2008	333-050-0020	1-8-2008	Amend(T)	2-1-2008
330-092-0050	3-1-2008	Adopt	4-1-2008	333-050-0020	3-17-2008	Amend	5-1-2008
330-092-0055	3-1-2008	Adopt	4-1-2008	333-050-0030	3-17-2008	Amend	5-1-2008
330-092-0060	3-1-2008	Adopt	4-1-2008	333-050-0040	3-17-2008	Amend	5-1-2008
330-092-0065	3-1-2008	Adopt	4-1-2008	333-050-0050	1-8-2008	Amend(T)	2-1-2008
330-092-0070	3-1-2008	Adopt	4-1-2008	333-050-0050	3-17-2008	Amend	5-1-2008
330-135-0010	1-2-2008	Adopt	2-1-2008	333-050-0060	3-17-2008	Amend	5-1-2008
330-135-0015	1-2-2008	Adopt	2-1-2008	333-050-0070	3-17-2008	Amend	5-1-2008
330-135-0020	1-2-2008	Adopt	2-1-2008	333-050-0080	3-17-2008	Amend	5-1-2008
330-135-0025	1-2-2008	Adopt	2-1-2008	333-050-0090	3-17-2008	Amend	5-1-2008
330-135-0030	1-2-2008	Adopt	2-1-2008	333-050-0095	3-17-2008	Amend	5-1-2008
330-135-0035	1-2-2008	Adopt	2-1-2008	333-050-0100	3-17-2008	Amend	5-1-2008
330-135-0040	1-2-2008	Adopt	2-1-2008	333-050-0110	3-17-2008	Amend	5-1-2008
330-135-0045	1-2-2008	Adopt	2-1-2008	333-050-0120	1-8-2008	Amend(T)	2-1-2008
330-135-0050	1-2-2008	Adopt	2-1-2008	333-050-0120	3-17-2008	Amend	5-1-2008
330-135-0055	1-2-2008	Adopt	2-1-2008	333-050-0130	3-17-2008	Amend	5-1-2008
330-150-0005	1-30-2008	Adopt	3-1-2008	333-050-0140	3-17-2008	Amend	5-1-2008
330-150-0015	1-30-2008	Adopt	3-1-2008	333-052-0030	4-3-2008	Amend	5-1-2008
330-150-0020	1-30-2008	Adopt	3-1-2008	333-052-0040	4-3-2008	Amend	5-1-2008
330-150-0025	1-30-2008	Adopt	3-1-2008	333-052-0050	4-3-2008	Amend	5-1-2008
330-150-0030	1-30-2008	Adopt	3-1-2008	333-052-0060	4-3-2008	Amend	5-1-2008
331-800-0010	3-15-2008	Adopt(T)	4-1-2008	333-052-0065	4-3-2008	Amend	5-1-2008
331-800-0020	3-15-2008	Adopt(T)	4-1-2008	333-052-0070	4-3-2008	Amend	5-1-2008
331-810-0020	3-15-2008	Adopt(T)	4-1-2008	333-052-0075	4-3-2008	Amend	5-1-2008
331-810-0030	3-15-2008	Adopt(T)	4-1-2008	333-052-0080	4-3-2008	Amend	5-1-2008

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333-052-0100	4-3-2008	Amend	5-1-2008	340-011-0005	3-20-2008	Amend	5-1-2008
333-052-0110	4-3-2008	Amend	5-1-2008	340-011-0009	3-20-2008	Adopt	5-1-2008
333-052-0120	4-3-2008	Amend	5-1-2008	340-011-0010	2-25-2008	Amend	4-1-2008
333-052-0130	4-3-2008	Amend	5-1-2008	340-011-0029	2-25-2008	Amend	4-1-2008
333-061-0030	2-15-2008	Amend	3-1-2008	340-011-0510	3-20-2008	Amend	5-1-2008
333-061-0032	2-15-2008	Amend	3-1-2008	340-011-0515	3-20-2008	Amend	5-1-2008
333-061-0034	2-15-2008	Amend	3-1-2008	340-011-0573	3-20-2008	Adopt	5-1-2008
333-061-0036	2-15-2008	Amend	3-1-2008	340-011-0575	3-20-2008	Amend	5-1-2008
333-061-0040	2-15-2008	Amend	3-1-2008	340-054-0035	2-27-2008	Amend	4-1-2008
333-061-0043	2-15-2008	Amend	3-1-2008	340-054-0060	2-27-2008	Amend	4-1-2008
333-061-0045	2-15-2008	Amend	3-1-2008	340-122-0210	3-10-2008	Amend	4-1-2008
333-061-0050	2-15-2008	Amend	3-1-2008	340-122-0330	3-10-2008	Amend	4-1-2008
333-061-0061	2-15-2008	Amend	3-1-2008	340-150-0006	3-10-2008	Amend	4-1-2008
333-061-0070	2-15-2008	Amend	3-1-2008	340-150-0008	3-10-2008	Amend	4-1-2008
333-061-0072	2-15-2008	Amend	3-1-2008	340-150-0010	3-10-2008	Amend	4-1-2008
333-061-0076	2-15-2008	Amend	3-1-2008	340-150-0020	3-10-2008	Amend	4-1-2008
333-061-0215	2-15-2008	Amend	3-1-2008	340-150-0021	3-10-2008	Amend	4-1-2008
333-061-0245	2-15-2008	Amend	3-1-2008	340-150-0052	3-10-2008	Amend	4-1-2008
333-061-0250	2-15-2008	Amend	3-1-2008	340-150-0102	3-10-2008	Amend	4-1-2008
333-061-0260	2-15-2008	Amend	3-1-2008	340-150-0110	3-10-2008	Amend	4-1-2008
333-061-0265	2-15-2008	Amend	3-1-2008	340-150-0135	3-10-2008	Amend	4-1-2008
333-080-0040	7-1-2008	Adopt	4-1-2008	340-150-0150	3-10-2008	Amend	4-1-2008
333-080-0050	7-1-2008	Adopt	4-1-2008	340-150-0152	3-10-2008	Amend	4-1-2008
333-150-0000	3-5-2008	Amend	4-1-2008	340-150-0160	3-10-2008	Amend	4-1-2008
333-520-0073	3-7-2008	Adopt	4-1-2008	340-150-0163	3-10-2008	Amend	4-1-2008
333-520-0110	7-1-2008	Amend	4-1-2008	340-150-0166	3-10-2008	Amend	4-1-2008
333-536-0005	1-1-2008	Amend	2-1-2008	340-150-0167	3-10-2008	Amend	4-1-2008
333-536-0010	1-1-2008	Amend	2-1-2008	340-150-0168	3-10-2008	Amend	4-1-2008
333-536-0015	1-1-2008	Amend	2-1-2008	340-150-0180	3-10-2008	Amend	4-1-2008
333-536-0020	1-1-2008	Amend	2-1-2008	340-150-0200	3-10-2008	Amend	4-1-2008
333-536-0030	1-1-2008	Amend	2-1-2008	340-150-0210	3-10-2008	Adopt	4-1-2008
333-536-0040	1-1-2008	Amend	2-1-2008	340-150-0250	3-10-2008	Amend	4-1-2008
333-536-0050	1-1-2008	Amend	2-1-2008	340-150-0300	3-10-2008	Amend	4-1-2008
333-536-0070	1-1-2008	Amend	2-1-2008	340-150-0310	3-10-2008	Amend	4-1-2008
333-536-0075	1-1-2008	Amend	2-1-2008	340-150-0350	3-10-2008	Amend	4-1-2008
333-536-0080	1-1-2008	Amend	2-1-2008	340-150-0352	3-10-2008	Amend	4-1-2008
333-536-0085	1-1-2008	Amend	2-1-2008	340-150-0354	3-10-2008	Amend	4-1-2008
333-536-0090	1-1-2008	Amend	2-1-2008	340-150-0360	3-10-2008	Amend	4-1-2008
333-536-0095	1-1-2008	Amend	2-1-2008	340-150-0410	3-10-2008	Amend	4-1-2008
333-536-0100	1-1-2008	Repeal	2-1-2008	340-150-0430	3-10-2008	Amend	4-1-2008
333-536-0105	1-1-2008	Adopt	2-1-2008	340-150-0450	3-10-2008	Amend	4-1-2008
333-536-0115	1-1-2008	Adopt	2-1-2008	340-150-0455	3-10-2008	Amend	4-1-2008
335-001-0005	4-10-2008	Amend	5-1-2008	340-150-0460	3-10-2008	Amend	4-1-2008
335-001-0008	4-10-2008	Adopt	5-1-2008	340-150-0465	3-10-2008	Amend	4-1-2008
335-001-0011	4-10-2008	Amend	5-1-2008	340-150-0470	3-10-2008	Amend	4-1-2008
335-005-0010	4-10-2008	Amend	5-1-2008	340-150-0510	3-10-2008	Amend	4-1-2008
335-005-0020	4-10-2008	Amend	5-1-2008	340-150-0555	3-10-2008	Amend	4-1-2008
335-060-0010	4-10-2008	Amend	5-1-2008	340-150-0560	3-10-2008	Amend	4-1-2008
335-070-0040	4-10-2008	Amend	5-1-2008	340-160-0030	3-10-2008	Amend	4-1-2008
335-095-0010	4-10-2008	Amend	5-1-2008	340-160-0150	3-10-2008	Amend	4-1-2008
335-095-0030	4-10-2008	Amend	5-1-2008	340-162-0005	3-10-2008	Amend	4-1-2008
335-095-0040	4-10-2008	Amend	5-1-2008	340-162-0010	3-10-2008	Amend	4-1-2008
335-095-0050	4-10-2008	Amend	5-1-2008	340-162-0020	3-10-2008	Amend	4-1-2008
335-095-0055	4-10-2008	Amend	5-1-2008	340-162-0040	3-10-2008	Amend	4-1-2008
335-095-0060	4-10-2008	Amend	5-1-2008	340-162-0054	3-10-2008	Repeal	4-1-2008

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340-200-0040	3-20-2008	Amend	5-1-2008	407-120-0114(T)	2-1-2008	Repeal	3-1-2008
340-222-0020	3-6-2008	Amend(T)	4-1-2008	407-120-0116	1-1-2008	Adopt(T)	2-1-2008
340-248-0260	11-30-2007	Amend	1-1-2008	407-120-0116	2-1-2008	Adopt	3-1-2008
350-011-0003	4-1-2008	Amend	4-1-2008	407-120-0116(T)	2-1-2008	Repeal	3-1-2008
350-011-0011	4-1-2008	Adopt	4-1-2008	407-120-0118	1-1-2008	Adopt(T)	2-1-2008
350-012-0007	4-1-2008	Amend	4-1-2008	407-120-0118	2-1-2008	Adopt	3-1-2008
350-012-0008	4-1-2008	Amend	4-1-2008	407-120-0118(T)	2-1-2008	Repeal	3-1-2008
350-016-0009	4-1-2008	Amend	4-1-2008	407-120-0165	1-1-2008	Adopt(T)	2-1-2008
407-005-0110	12-1-2007	Amend	1-1-2008	407-120-0165	2-1-2008	Adopt	3-1-2008
407-007-0000	3-31-2008	Adopt(T)	5-1-2008	407-120-0165(T)	2-1-2008	Repeal	3-1-2008
407-007-0010	3-31-2008	Adopt(T)	5-1-2008	407-120-0300	1-1-2008	Adopt	2-1-2008
407-007-0020	3-31-2008	Adopt(T)	5-1-2008	407-120-0310	1-1-2008	Adopt	2-1-2008
407-007-0030	3-31-2008	Adopt(T)	5-1-2008	407-120-0320	1-1-2008	Adopt	2-1-2008
407-007-0040	3-31-2008	Adopt(T)	5-1-2008	407-120-0330	1-1-2008	Adopt	2-1-2008
407-007-0050	3-31-2008	Adopt(T)	5-1-2008	407-120-0340	1-1-2008	Adopt	2-1-2008
407-007-0060	3-31-2008	Adopt(T)	5-1-2008	407-120-0350	1-1-2008	Adopt	2-1-2008
407-007-0070	3-31-2008	Adopt(T)	5-1-2008	407-120-0360	1-1-2008	Adopt	2-1-2008
407-007-0080	3-31-2008	Adopt(T)	5-1-2008	407-120-0370	1-1-2008	Adopt	2-1-2008
407-007-0090	3-31-2008	Adopt(T)	5-1-2008	407-120-0380	1-1-2008	Adopt	2-1-2008
407-007-0210	3-31-2008	Amend(T)	5-1-2008	410-001-0100	1-1-2008	Amend(T)	2-1-2008
407-007-0270	3-31-2008	Amend(T)	5-1-2008	410-001-0100	2-1-2008	Am. & Ren.	3-1-2008
407-007-0330	3-31-2008	Amend(T)	5-1-2008	410-001-0100(T)	2-1-2008	Repeal	3-1-2008
407-012-0005	12-1-2007	Adopt	1-1-2008	410-001-0110	1-1-2008	Amend(T)	2-1-2008
407-012-0010	12-1-2007	Adopt	1-1-2008	410-001-0110	2-1-2008	Am. & Ren.	3-1-2008
407-012-0015	12-1-2007	Adopt	1-1-2008	410-001-0110(T)	2-1-2008	Repeal	3-1-2008
407-012-0020	12-1-2007	Adopt	1-1-2008	410-001-0120	1-1-2008	Amend(T)	2-1-2008
407-012-0025	12-1-2007	Adopt	1-1-2008	410-001-0120	2-1-2008	Am. & Ren.	3-1-2008
407-014-0300	1-1-2008	Adopt	2-1-2008	410-001-0120(T)	2-1-2008	Repeal	3-1-2008
407-014-0305	1-1-2008	Adopt	2-1-2008	410-001-0130	1-1-2008	Amend(T)	2-1-2008
407-014-0310	1-1-2008	Adopt	2-1-2008	410-001-0130	2-1-2008	Am. & Ren.	3-1-2008
407-014-0315	1-1-2008	Adopt	2-1-2008	410-001-0130(T)	2-1-2008	Repeal	3-1-2008
407-014-0320	1-1-2008	Adopt	2-1-2008	410-001-0140	1-1-2008	Amend(T)	2-1-2008
407-045-0800	12-3-2007	Adopt(T)	1-1-2008	410-001-0140	2-1-2008	Am. & Ren.	3-1-2008
407-045-0810	12-3-2007	Adopt(T)	1-1-2008	410-001-0140(T)	2-1-2008	Repeal	3-1-2008
407-045-0820	12-3-2007	Adopt(T)	1-1-2008	410-001-0150	1-1-2008	Amend(T)	2-1-2008
407-045-0830	12-3-2007	Adopt(T)	1-1-2008	410-001-0150	2-1-2008	Am. & Ren.	3-1-2008
407-045-0840	12-3-2007	Adopt(T)	1-1-2008	410-001-0150(T)	2-1-2008	Repeal	3-1-2008
407-045-0850	12-3-2007	Adopt(T)	1-1-2008	410-001-0160	1-1-2008	Amend(T)	2-1-2008
407-045-0860	12-3-2007	Adopt(T)	1-1-2008	410-001-0160	2-1-2008	Am. & Ren.	3-1-2008
407-045-0870	12-3-2007	Adopt(T)	1-1-2008	410-001-0160(T)	2-1-2008	Repeal	3-1-2008
407-045-0880	12-3-2007	Adopt(T)	1-1-2008	410-001-0170	1-1-2008	Amend(T)	2-1-2008
407-045-0890	12-3-2007	Adopt(T)	1-1-2008	410-001-0170	2-1-2008	Am. & Ren.	3-1-2008
407-045-0900	12-3-2007	Adopt(T)	1-1-2008	410-001-0170(T)	2-1-2008	Repeal	3-1-2008
407-045-0910	12-3-2007	Adopt(T)	1-1-2008	410-001-0180	1-1-2008	Amend(T)	2-1-2008
407-045-0920	12-3-2007	Adopt(T)	1-1-2008	410-001-0180	2-1-2008	Am. & Ren.	3-1-2008
407-045-0930	12-3-2007	Adopt(T)	1-1-2008	410-001-0180(T)	2-1-2008	Repeal	3-1-2008
407-045-0940	12-3-2007	Adopt(T)	1-1-2008	410-001-0190	1-1-2008	Amend(T)	2-1-2008
407-045-0950	12-3-2007	Adopt(T)	1-1-2008	410-001-0190	2-1-2008	Am. & Ren.	3-1-2008
407-045-0960	12-3-2007	Adopt(T)	1-1-2008	410-001-0190(T)	2-1-2008	Repeal	3-1-2008
407-045-0970	12-3-2007	Adopt(T)	1-1-2008	410-001-0200	1-1-2008	Amend(T)	2-1-2008
407-045-0980	12-3-2007	Adopt(T)	1-1-2008	410-001-0200	2-1-2008	Am. & Ren.	3-1-2008
407-120-0112	1-1-2008	Adopt(T)	2-1-2008	410-001-0200(T)	2-1-2008	Repeal	3-1-2008
407-120-0112	2-1-2008	Adopt	3-1-2008	410-050-0100	1-25-2008	Amend	3-1-2008
407-120-0112(T)	2-1-2008	Repeal	3-1-2008	410-050-0110	1-25-2008	Amend	3-1-2008
407-120-0114	1-1-2008	Adopt(T)	2-1-2008	410-050-0120	1-25-2008	Amend	3-1-2008

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410-050-0140	1-25-2008	Amend	3-1-2008	410-120-0030	4-1-2008	Adopt(T)	5-1-2008
410-050-0150	1-25-2008	Amend	3-1-2008	410-120-1200	1-1-2008	Amend	1-1-2008
410-050-0160	1-25-2008	Amend	3-1-2008	410-120-1230	3-1-2008	Amend	4-1-2008
410-050-0170	1-25-2008	Amend	3-1-2008	410-120-1295	1-1-2008	Amend	1-1-2008
410-050-0180	1-25-2008	Amend	3-1-2008	410-120-1320	1-1-2008	Amend	1-1-2008
410-050-0190	1-25-2008	Amend	3-1-2008	410-120-1340	1-1-2008	Amend	1-1-2008
410-050-0200	1-25-2008	Amend	3-1-2008	410-120-1397	1-1-2008	Amend	1-1-2008
410-050-0210	1-25-2008	Amend	3-1-2008	410-120-1560	1-1-2008	Amend	1-1-2008
410-050-0220	1-25-2008	Amend	3-1-2008	410-120-1570	1-1-2008	Amend	1-1-2008
410-050-0230	1-25-2008	Amend	3-1-2008	410-121-0040	1-1-2008	Amend	1-1-2008
410-050-0240	1-25-2008	Amend	3-1-2008	410-121-0040	4-1-2008	Amend	5-1-2008
410-050-0250	1-25-2008	Amend	3-1-2008	410-121-0135	1-1-2008	Amend	1-1-2008
410-050-0401	1-25-2008	Amend	3-1-2008	410-121-0140	1-1-2008	Amend	1-1-2008
410-050-0411	1-25-2008	Amend	3-1-2008	410-121-0145	4-1-2008	Amend	5-1-2008
410-050-0421	1-25-2008	Amend	3-1-2008	410-121-0146	1-1-2008	Amend	1-1-2008
410-050-0431	1-25-2008	Amend	3-1-2008	410-121-0147	4-1-2008	Amend	5-1-2008
410-050-0441	1-25-2008	Repeal	3-1-2008	410-121-0148	1-1-2008	Amend	1-1-2008
410-050-0451	1-25-2008	Amend	3-1-2008	410-121-0150	1-1-2008	Amend	1-1-2008
410-050-0461	1-25-2008	Amend	3-1-2008	410-121-0155	1-1-2008	Amend	1-1-2008
410-050-0471	1-25-2008	Amend	3-1-2008	410-121-0160	1-1-2008	Amend	1-1-2008
410-050-0481	1-25-2008	Amend	3-1-2008	410-121-0300	1-1-2008	Amend	1-1-2008
410-050-0491	1-25-2008	Amend	3-1-2008	410-122-0202	1-1-2008	Amend	1-1-2008
410-050-0501	1-25-2008	Amend	3-1-2008	410-122-0203	1-1-2008	Amend	1-1-2008
410-050-0511	1-25-2008	Amend	3-1-2008	410-122-0320	1-1-2008	Amend	1-1-2008
410-050-0521	1-25-2008	Amend	3-1-2008	410-122-0325	1-1-2008	Amend	1-1-2008
410-050-0531	1-25-2008	Amend	3-1-2008	410-122-0330	1-1-2008	Amend	1-1-2008
410-050-0541	1-25-2008	Amend	3-1-2008	410-122-0380	1-1-2008	Amend	1-1-2008
410-050-0551	1-25-2008	Amend	3-1-2008	410-122-0662	1-1-2008	Adopt	1-1-2008
410-050-0561	1-25-2008	Amend	3-1-2008	410-122-0678	1-1-2008	Amend	1-1-2008
410-050-0571	1-25-2008	Repeal	3-1-2008	410-122-0720	1-1-2008	Amend	1-1-2008
410-050-0581	1-25-2008	Repeal	3-1-2008	410-123-1000	1-1-2008	Amend	1-1-2008
410-050-0591	1-25-2008	Amend	3-1-2008	410-123-1040	1-1-2008	Repeal	1-1-2008
410-050-0601	1-25-2008	Adopt	3-1-2008	410-123-1060	1-1-2008	Amend	1-1-2008
410-050-0700	1-25-2008	Amend	3-1-2008	410-123-1100	1-1-2008	Amend	1-1-2008
410-050-0710	1-25-2008	Amend	3-1-2008	410-123-1160	1-1-2008	Amend	1-1-2008
410-050-0720	1-25-2008	Amend	3-1-2008	410-123-1200	1-1-2008	Amend	1-1-2008
410-050-0730	1-25-2008	Amend	3-1-2008	410-123-1220	1-1-2008	Amend	1-1-2008
410-050-0740	1-25-2008	Amend	3-1-2008	410-123-1240	1-1-2008	Amend	1-1-2008
410-050-0750	1-25-2008	Amend	3-1-2008	410-123-1260	1-1-2008	Amend	1-1-2008
410-050-0760	1-25-2008	Amend	3-1-2008	410-123-1490	1-1-2008	Amend	1-1-2008
410-050-0770	1-25-2008	Amend	3-1-2008	410-123-1620	1-1-2008	Amend	1-1-2008
410-050-0780	1-25-2008	Amend	3-1-2008	410-123-1670	1-1-2008	Amend	1-1-2008
410-050-0790	1-25-2008	Amend	3-1-2008	410-125-0080	12-20-2007	Amend(T)	2-1-2008
410-050-0800	1-25-2008	Amend	3-1-2008	410-127-0060	1-1-2008	Amend	1-1-2008
410-050-0810	1-25-2008	Amend	3-1-2008	410-129-0070	1-1-2008	Amend	1-1-2008
410-050-0820	1-25-2008	Amend	3-1-2008	410-129-0200	1-1-2008	Amend	1-1-2008
410-050-0830	1-25-2008	Amend	3-1-2008	410-130-0200	12-20-2007	Amend(T)	2-1-2008
410-050-0840	1-25-2008	Amend	3-1-2008	410-130-0580	12-20-2007	Amend(T)	2-1-2008
410-050-0850	1-25-2008	Amend	3-1-2008	410-130-0610	4-1-2008	Amend(T)	5-1-2008
410-050-0860	1-25-2008	Amend	3-1-2008	410-141-0180	1-1-2008	Amend	1-1-2008
410-050-0861	1-1-2008	Amend	2-1-2008	410-141-0480	1-1-2008	Amend	1-1-2008
410-050-0861	1-25-2008	Amend	3-1-2008	410-141-0520	12-20-2007	Amend(T)	2-1-2008
410-050-0870	1-25-2008	Amend	3-1-2008	410-141-0520	3-27-2008	Amend	5-1-2008
410-120-0000	1-1-2008	Amend	1-1-2008	410-141-0520	4-1-2008	Amend(T)	5-1-2008
410-120-0010	12-5-2007	Adopt(T)	1-1-2008	410-141-0520(T)	12-20-2007	Suspend	2-1-2008

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410-146-0000	1-1-2008	Amend	1-1-2008	411-070-0091	3-1-2008	Amend	4-1-2008
410-146-0020	1-1-2008	Amend	1-1-2008	411-070-0091(T)	3-1-2008	Repeal	4-1-2008
410-146-0021	1-1-2008	Amend	1-1-2008	411-070-0095	3-1-2008	Amend	4-1-2008
410-146-0025	1-1-2008	Repeal	1-1-2008	411-070-0095(T)	3-1-2008	Repeal	4-1-2008
410-146-0040	1-1-2008	Amend	1-1-2008	411-070-0359	3-1-2008	Amend	4-1-2008
410-146-0060	1-1-2008	Amend	1-1-2008	411-070-0359(T)	3-1-2008	Repeal	4-1-2008
410-146-0075	1-1-2008	Amend	1-1-2008	411-070-0428	3-1-2008	Repeal	4-1-2008
410-146-0080	1-1-2008	Am. & Ren.	1-1-2008	411-070-0442	3-1-2008	Amend	4-1-2008
410-146-0080	1-1-2008	Am. & Ren.	1-1-2008	411-070-0442(T)	3-1-2008	Repeal	4-1-2008
410-146-0080	1-1-2008	Amend	1-1-2008	411-070-0452	3-1-2008	Amend	4-1-2008
410-146-0100	1-1-2008	Amend	1-1-2008	411-070-0452(T)	3-1-2008	Repeal	4-1-2008
410-146-0120	1-1-2008	Amend	1-1-2008	411-070-0462	3-1-2008	Repeal	4-1-2008
410-146-0130	1-1-2008	Amend	1-1-2008	411-070-0465	3-1-2008	Amend	4-1-2008
410-146-0140	1-1-2008	Amend	1-1-2008	411-070-0465(T)	3-1-2008	Repeal	4-1-2008
410-146-0160	1-1-2008	Amend	1-1-2008	411-085-0005	3-1-2008	Amend(T)	3-1-2008
410-146-0180	1-1-2008	Repeal	1-1-2008	411-085-0200	3-6-2008	Amend	4-1-2008
410-146-0200	1-1-2008	Amend	1-1-2008	411-085-0310	3-6-2008	Amend	4-1-2008
410-146-0220	1-1-2008	Amend	1-1-2008	411-086-0100	3-1-2008	Amend(T)	3-1-2008
410-146-0240	1-1-2008	Amend	1-1-2008	411-086-0200	3-6-2008	Amend	4-1-2008
410-146-0340	1-1-2008	Amend	1-1-2008	411-088-0070	3-6-2008	Amend	4-1-2008
410-146-0380	1-1-2008	Amend	1-1-2008	411-330-0020	12-28-2007	Amend	2-1-2008
410-146-0400	1-1-2008	Repeal	1-1-2008	411-330-0020(T)	12-28-2007	Repeal	2-1-2008
410-146-0420	1-1-2008	Repeal	1-1-2008	411-330-0030	12-28-2007	Amend	2-1-2008
410-146-0440	1-1-2008	Amend	1-1-2008	411-330-0030(T)	12-28-2007	Repeal	2-1-2008
410-146-0460	1-1-2008	Amend	1-1-2008	411-340-0020	1-1-2008	Amend(T)	2-1-2008
410-147-0365	1-1-2008	Amend	1-1-2008	411-340-0060	1-1-2008	Amend(T)	2-1-2008
411-030-0020	4-1-2008	Amend(T)	5-1-2008	411-340-0070	1-1-2008	Amend(T)	2-1-2008
411-030-0040	4-1-2008	Amend(T)	5-1-2008	411-340-0130	1-1-2008	Amend(T)	2-1-2008
411-030-0050	4-1-2008	Amend(T)	5-1-2008	411-340-0150	1-1-2008	Amend(T)	2-1-2008
411-030-0070	4-1-2008	Amend(T)	5-1-2008	411-340-0170	1-1-2008	Amend(T)	2-1-2008
411-030-0100	4-1-2008	Adopt(T)	5-1-2008	411-355-0000	4-15-2008	Adopt(T)	5-1-2008
411-036-0000	4-1-2008	Suspend	5-1-2008	411-355-0010	4-15-2008	Adopt(T)	5-1-2008
411-036-0010	4-1-2008	Suspend	5-1-2008	411-355-0020	4-15-2008	Adopt(T)	5-1-2008
411-036-0020	4-1-2008	Suspend	5-1-2008	411-355-0030	4-15-2008	Adopt(T)	5-1-2008
411-036-0030	4-1-2008	Suspend	5-1-2008	411-355-0040	4-15-2008	Adopt(T)	5-1-2008
411-036-0040	4-1-2008	Suspend	5-1-2008	411-355-0050	4-15-2008	Adopt(T)	5-1-2008
411-036-0045	4-1-2008	Suspend	5-1-2008	411-355-0060	4-15-2008	Adopt(T)	5-1-2008
411-036-0050	4-1-2008	Suspend	5-1-2008	411-355-0070	4-15-2008	Adopt(T)	5-1-2008
411-036-0060	4-1-2008	Suspend	5-1-2008	411-355-0080	4-15-2008	Adopt(T)	5-1-2008
411-036-0070	4-1-2008	Suspend	5-1-2008	411-355-0090	4-15-2008	Adopt(T)	5-1-2008
411-036-0080	4-1-2008	Suspend	5-1-2008	411-355-0100	4-15-2008	Adopt(T)	5-1-2008
411-036-0090	4-1-2008	Suspend	5-1-2008	411-355-0110	4-15-2008	Adopt(T)	5-1-2008
411-036-0100	4-1-2008	Suspend	5-1-2008	411-355-0120	4-15-2008	Adopt(T)	5-1-2008
411-036-0110	4-1-2008	Suspend	5-1-2008	413-010-0400	12-1-2007	Amend	1-1-2008
411-036-0120	4-1-2008	Suspend	5-1-2008	413-010-0410	12-1-2007	Amend	1-1-2008
411-036-0130	4-1-2008	Suspend	5-1-2008	413-010-0420	12-1-2007	Amend	1-1-2008
411-036-0140	4-1-2008	Suspend	5-1-2008	413-010-0430	12-1-2007	Amend	1-1-2008
411-070-0005	3-1-2008	Amend	4-1-2008	413-010-0440	12-1-2007	Amend	1-1-2008
411-070-0005(T)	3-1-2008	Repeal	4-1-2008	413-010-0450	12-1-2007	Repeal	1-1-2008
411-070-0027	3-1-2008	Amend	4-1-2008	413-010-0460	12-1-2007	Repeal	1-1-2008
411-070-0027(T)	3-1-2008	Repeal	4-1-2008	413-010-0470	12-1-2007	Repeal	1-1-2008
411-070-0035	3-1-2008	Amend	4-1-2008	413-010-0480	12-1-2007	Amend	1-1-2008
411-070-0035(T)	3-1-2008	Repeal	4-1-2008	413-010-0490	12-1-2007	Repeal	1-1-2008
411-070-0045	3-1-2008	Amend	4-1-2008	413-015-0100	12-3-2007	Amend(T)	1-1-2008
411-070-0085	3-1-2008	Amend	4-1-2008	413-015-0100	4-1-2008	Amend	5-1-2008

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413-015-0115	12-3-2007	Amend(T)	1-1-2008	413-100-0040	1-1-2008	Suspend	2-1-2008
413-015-0115	1-1-2008	Amend(T)	2-1-2008	413-100-0900	1-1-2008	Adopt(T)	2-1-2008
413-015-0115	4-1-2008	Amend	5-1-2008	413-100-0905	1-1-2008	Adopt(T)	2-1-2008
413-015-0115(T)	12-3-2007	Suspend	1-1-2008	413-100-0910	1-1-2008	Adopt(T)	2-1-2008
413-015-0115(T)	1-1-2008	Suspend	2-1-2008	413-100-0915	1-1-2008	Adopt(T)	2-1-2008
413-015-0205	12-3-2007	Amend(T)	1-1-2008	413-100-0920	1-1-2008	Adopt(T)	2-1-2008
413-015-0205	1-1-2008	Amend(T)	2-1-2008	413-100-0925	1-1-2008	Adopt(T)	2-1-2008
413-015-0205	4-1-2008	Amend	5-1-2008	413-100-0930	1-1-2008	Adopt(T)	2-1-2008
413-015-0205(T)	1-1-2008	Suspend	2-1-2008	413-100-0935	1-1-2008	Adopt(T)	2-1-2008
413-015-0210	1-1-2008	Amend(T)	2-1-2008	413-100-0940	1-1-2008	Adopt(T)	2-1-2008
413-015-0211	1-1-2008	Amend(T)	2-1-2008	413-120-0060	12-12-2007	Amend(T)	1-1-2008
413-015-0212	1-1-2008	Amend(T)	2-1-2008	413-120-0400	1-1-2008	Amend(T)	2-1-2008
413-015-0215	1-1-2008	Amend(T)	2-1-2008	413-120-0410	1-1-2008	Amend(T)	2-1-2008
413-015-0220	1-1-2008	Amend(T)	2-1-2008	413-120-0420	1-1-2008	Amend(T)	2-1-2008
413-015-0405	1-1-2008	Amend(T)	2-1-2008	413-120-0430	1-1-2008	Suspend	2-1-2008
413-015-0415	1-1-2008	Amend(T)	2-1-2008	413-120-0440	1-1-2008	Amend(T)	2-1-2008
413-015-0415	4-1-2008	Amend	5-1-2008	413-120-0450	1-1-2008	Amend(T)	2-1-2008
413-015-0415(T)	1-1-2008	Suspend	2-1-2008	413-120-0455	1-1-2008	Amend(T)	2-1-2008
413-015-0420	4-1-2008	Amend	5-1-2008	413-120-0460	1-1-2008	Amend(T)	2-1-2008
413-015-0520	1-1-2008	Adopt(T)	2-1-2008	413-120-0470	1-1-2008	Amend(T)	2-1-2008
413-015-0525	1-1-2008	Adopt(T)	2-1-2008	413-200-0210	1-1-2008	Amend(T)	2-1-2008
413-015-0530	1-1-2008	Adopt(T)	2-1-2008	413-200-0220	1-1-2008	Amend(T)	2-1-2008
413-015-0535	1-1-2008	Adopt(T)	2-1-2008	413-200-0404	1-1-2008	Adopt(T)	2-1-2008
413-015-0540	1-1-2008	Adopt(T)	2-1-2008	413-200-0409	1-1-2008	Adopt(T)	2-1-2008
413-015-0545	1-1-2008	Adopt(T)	2-1-2008	413-200-0414	1-1-2008	Adopt(T)	2-1-2008
413-015-0550	1-1-2008	Adopt(T)	2-1-2008	413-200-0419	1-1-2008	Adopt(T)	2-1-2008
413-015-0555	1-1-2008	Adopt(T)	2-1-2008	413-200-0424	1-1-2008	Adopt(T)	2-1-2008
413-015-0560	1-1-2008	Adopt(T)	2-1-2008	415-010-0005	12-5-2007	Adopt(T)	1-1-2008
413-015-0565	1-1-2008	Adopt(T)	2-1-2008	415-010-0005	2-12-2008	Suspend	3-1-2008
413-015-1000	1-1-2008	Amend(T)	2-1-2008	415-051-0045	12-11-2007	Amend	1-1-2008
413-050-0200	4-1-2008	Amend	5-1-2008	436-010-0210	1-2-2008	Amend(T)	1-1-2008
413-050-0200(T)	4-1-2008	Repeal	5-1-2008	436-010-0220	1-2-2008	Amend(T)	1-1-2008
413-050-0210	4-1-2008	Amend	5-1-2008	436-010-0280	1-2-2008	Amend(T)	1-1-2008
413-050-0210(T)	4-1-2008	Repeal	5-1-2008	436-035-0500	12-28-2007	Amend(T)	2-1-2008
413-050-0220	4-1-2008	Amend	5-1-2008	437-001-0015	3-1-2008	Amend	4-1-2008
413-050-0220(T)	4-1-2008	Repeal	5-1-2008	437-001-0205	1-1-2008	Amend	1-1-2008
413-050-0230	4-1-2008	Amend	5-1-2008	437-001-0215	1-1-2008	Amend	1-1-2008
413-050-0230(T)	4-1-2008	Repeal	5-1-2008	437-001-0220	1-1-2008	Amend	1-1-2008
413-050-0235	4-1-2008	Adopt	5-1-2008	437-001-0240	1-1-2008	Amend	1-1-2008
413-050-0235(T)	4-1-2008	Repeal	5-1-2008	437-001-0255	1-1-2008	Amend	1-1-2008
413-050-0240	4-1-2008	Repeal	5-1-2008	437-001-0295	12-3-2007	Amend	1-1-2008
413-050-0250	4-1-2008	Repeal	5-1-2008	437-001-0700	1-1-2008	Amend	2-1-2008
413-050-0260	4-1-2008	Repeal	5-1-2008	437-001-0706	1-1-2008	Adopt	2-1-2008
413-050-0270	4-1-2008	Repeal	5-1-2008	437-001-0740	1-1-2008	Amend	2-1-2008
413-050-0280	4-1-2008	Amend	5-1-2008	437-002-0100	12-3-2007	Amend	1-1-2008
413-050-0280(T)	4-1-2008	Repeal	5-1-2008	437-002-0122	12-3-2007	Adopt	1-1-2008
413-050-0290	4-1-2008	Repeal	5-1-2008	437-002-0142	5-1-2008	Amend	5-1-2008
413-050-0300	4-1-2008	Repeal	5-1-2008	437-004-1120	5-1-2008	Amend	5-1-2008
413-070-0600	1-1-2008	Amend(T)	2-1-2008	437-007-0010	7-1-2008	Amend	4-1-2008
413-070-0620	1-1-2008	Amend(T)	2-1-2008	437-007-0025	7-1-2008	Amend	4-1-2008
413-070-0625	1-1-2008	Amend(T)	2-1-2008	437-007-0685	7-1-2008	Repeal	4-1-2008
413-070-0640	1-1-2008	Amend(T)	2-1-2008	437-007-0775	3-5-2008	Amend	4-1-2008
413-070-0810	1-1-2008	Amend(T)	2-1-2008	437-007-0780	3-5-2008	Amend	4-1-2008
413-070-0860	1-1-2008	Amend(T)	2-1-2008	437-007-1500	7-1-2008	Adopt	4-1-2008
413-070-0880	1-1-2008	Amend(T)	2-1-2008	437-007-1505	7-1-2008	Adopt	4-1-2008

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437-007-1520	7-1-2008	Adopt	4-1-2008	443-002-0100	1-2-2008	Amend	2-1-2008
437-007-1525	7-1-2008	Adopt	4-1-2008	459-001-0005	4-4-2008	Amend	5-1-2008
437-007-1530	7-1-2008	Adopt	4-1-2008	459-001-0030	4-2-2008	Amend	5-1-2008
437-007-1535	7-1-2008	Adopt	4-1-2008	459-001-0032	4-2-2008	Adopt	5-1-2008
438-005-0046	1-1-2008	Amend	1-1-2008	459-001-0035	4-2-2008	Amend	5-1-2008
438-005-0050	1-1-2008	Amend	1-1-2008	459-001-0040	4-2-2008	Amend	5-1-2008
438-005-0055	1-1-2008	Amend	1-1-2008	459-007-0110	11-23-2007	Amend	1-1-2008
438-006-0020	1-1-2008	Amend	1-1-2008	459-007-0160	11-23-2007	Adopt	1-1-2008
438-006-0100	1-1-2008	Amend	1-1-2008	459-007-0290	11-23-2007	Amend	1-1-2008
438-009-0005	1-1-2008	Amend	1-1-2008	459-007-0530	11-23-2007	Amend	1-1-2008
438-009-0010	1-1-2008	Amend	1-1-2008	459-009-0084	11-23-2007	Amend	1-1-2008
438-009-0020	1-1-2008	Amend	1-1-2008	459-009-0085	11-23-2007	Amend	1-1-2008
438-009-0022	1-1-2008	Amend	1-1-2008	459-009-0090	11-23-2007	Amend	1-1-2008
438-009-0025	1-1-2008	Amend	1-1-2008	459-009-0130	4-2-2008	Amend	5-1-2008
438-009-0028	1-1-2008	Amend	1-1-2008	459-010-0003	11-23-2007	Amend	1-1-2008
438-009-0030	1-1-2008	Amend	1-1-2008	459-010-0014	11-23-2007	Amend	1-1-2008
438-009-0035	1-1-2008	Amend	1-1-2008	459-010-0014	4-2-2008	Amend(T)	5-1-2008
438-011-0020	1-1-2008	Amend	1-1-2008	459-010-0035	11-23-2007	Amend	1-1-2008
438-012-0035	1-1-2008	Amend	1-1-2008	459-010-0042	4-2-2008	Amend(T)	5-1-2008
438-015-0005	1-1-2008	Amend	1-1-2008	459-010-0055	11-23-2007	Amend	1-1-2008
438-015-0019	1-1-2008	Adopt	1-1-2008	459-011-0050	11-23-2007	Amend	1-1-2008
438-015-0022	1-1-2008	Adopt	1-1-2008	459-013-0110	11-23-2007	Amend	1-1-2008
438-015-0080	1-1-2008	Amend	1-1-2008	459-015-0055	4-2-2008	Amend	5-1-2008
438-019-0030	1-1-2008	Amend	1-1-2008	459-017-0060	11-23-2007	Amend	1-1-2008
441-500-0020	1-28-2008	Amend	3-1-2008	459-045-0030	11-23-2007	Amend	1-1-2008
441-500-0030	1-28-2008	Amend	3-1-2008	459-050-0040	4-2-2008	Amend	5-1-2008
441-710-0500	1-28-2008	Amend	3-1-2008	459-050-0080	11-23-2007	Amend	1-1-2008
441-730-0000	12-27-2007	Amend	1-1-2008	459-050-0220	11-23-2007	Amend	1-1-2008
441-730-0010	12-27-2007	Amend	1-1-2008	459-070-0001	11-23-2007	Amend	1-1-2008
441-730-0015	12-27-2007	Amend	1-1-2008	459-075-0010	11-23-2007	Amend	1-1-2008
441-730-0030	1-28-2008	Amend	3-1-2008	459-075-0020	11-23-2007	Adopt	1-1-2008
441-730-0270	12-27-2007	Amend	1-1-2008	459-075-0150	11-23-2007	Amend	1-1-2008
441-730-0275	12-27-2007	Amend	1-1-2008	459-080-0020	11-23-2007	Adopt	1-1-2008
441-730-0310	12-27-2007	Amend	1-1-2008	459-080-0250	11-23-2007	Amend	1-1-2008
441-755-0000	11-30-2007	Adopt	1-1-2008	461-001-0000	1-1-2008	Amend	2-1-2008
441-755-0010	11-30-2007	Adopt	1-1-2008	461-001-0000	1-1-2008	Amend(T)	2-1-2008
441-755-0100	11-30-2007	Adopt	1-1-2008	461-001-0000	3-1-2008	Amend	4-1-2008
441-755-0110	11-30-2007	Adopt	1-1-2008	461-001-0000	4-1-2008	Amend	5-1-2008
441-755-0120	11-30-2007	Adopt	1-1-2008	461-001-0000(T)	1-1-2008	Repeal	2-1-2008
441-755-0130	11-30-2007	Adopt	1-1-2008	461-001-0000(T)	3-1-2008	Repeal	4-1-2008
441-755-0140	11-30-2007	Adopt	1-1-2008	461-001-0025	3-1-2008	Amend	4-1-2008
441-755-0150	11-30-2007	Adopt	1-1-2008	461-001-0025(T)	3-1-2008	Repeal	4-1-2008
441-755-0160	11-30-2007	Adopt	1-1-2008	461-001-0035	1-1-2008	Amend	2-1-2008
441-755-0170	11-30-2007	Adopt	1-1-2008	461-006-0452	4-1-2008	Am. & Ren.	5-1-2008
441-755-0200	11-30-2007	Adopt	1-1-2008	461-025-0310	3-1-2008	Amend	4-1-2008
441-755-0210	11-30-2007	Adopt	1-1-2008	461-025-0310	4-1-2008	Amend	5-1-2008
441-755-0220	11-30-2007	Adopt	1-1-2008	461-025-0310(T)	3-1-2008	Repeal	4-1-2008
441-755-0300	11-30-2007	Adopt	1-1-2008	461-025-0350	1-1-2008	Amend(T)	2-1-2008
441-755-0310	11-30-2007	Adopt	1-1-2008	461-025-0350	4-1-2008	Amend	5-1-2008
442-005-0270	3-31-2008	Amend(T)	5-1-2008	461-025-0350(T)	4-1-2008	Repeal	5-1-2008
443-002-0010	1-2-2008	Amend	2-1-2008	461-101-0010	3-1-2008	Amend	4-1-2008
443-002-0030	1-2-2008	Amend(T)	2-1-2008	461-101-0010(T)	3-1-2008	Repeal	4-1-2008
443-002-0030	4-15-2008	Amend	5-1-2008	461-105-0010	3-1-2008	Amend	4-1-2008
443-002-0060	1-2-2008	Amend	2-1-2008	461-105-0010(T)	3-1-2008	Repeal	4-1-2008
443-002-0070	1-2-2008	Amend	2-1-2008	461-110-0630	3-1-2008	Amend	4-1-2008

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461-115-0030	3-1-2008	Amend	4-1-2008	461-135-0089	3-1-2008	Amend	4-1-2008
461-115-0030(T)	3-1-2008	Repeal	4-1-2008	461-135-0089(T)	3-1-2008	Repeal	4-1-2008
461-115-0050	1-28-2008	Amend(T)	3-1-2008	461-135-0200	3-1-2008	Amend	4-1-2008
461-115-0190	3-1-2008	Amend	4-1-2008	461-135-0200(T)	3-1-2008	Repeal	4-1-2008
461-115-0190(T)	3-1-2008	Repeal	4-1-2008	461-135-0475	3-1-2008	Amend	4-1-2008
461-115-0430	3-1-2008	Amend	4-1-2008	461-135-0475(T)	3-1-2008	Repeal	4-1-2008
461-115-0430(T)	3-1-2008	Repeal	4-1-2008	461-135-0493	12-17-2007	Amend(T)	2-1-2008
461-115-0610	4-1-2008	Amend	5-1-2008	461-135-0505	3-1-2008	Amend	4-1-2008
461-115-0700	1-1-2008	Amend	2-1-2008	461-135-0505(T)	3-1-2008	Repeal	4-1-2008
461-115-0705	4-1-2008	Amend	5-1-2008	461-135-0506	3-1-2008	Amend	4-1-2008
461-115-0715	3-1-2008	Adopt	4-1-2008	461-135-0506(T)	3-1-2008	Repeal	4-1-2008
461-115-0715(T)	3-1-2008	Repeal	4-1-2008	461-135-0725	1-1-2008	Amend	2-1-2008
461-120-0120	1-30-2008	Amend(T)	3-1-2008	461-135-0750	4-7-2008	Amend(T)	5-1-2008
461-120-0125	1-30-2008	Amend(T)	3-1-2008	461-135-0780	1-1-2008	Amend	2-1-2008
461-120-0125	2-22-2008	Amend(T)	4-1-2008	461-135-0835	1-1-2008	Amend	2-1-2008
461-120-0310	12-1-2007	Amend(T)	1-1-2008	461-135-0900	1-30-2008	Amend(T)	3-1-2008
461-120-0310	3-1-2008	Amend	4-1-2008	461-135-0900	2-22-2008	Amend(T)	4-1-2008
461-120-0310(T)	12-1-2007	Suspend	1-1-2008	461-135-0910	4-1-2008	Amend	5-1-2008
461-120-0310(T)	3-1-2008	Repeal	4-1-2008	461-135-1102	1-28-2008	Amend(T)	3-1-2008
461-120-0340	3-1-2008	Amend	4-1-2008	461-135-1125	1-28-2008	Adopt(T)	3-1-2008
461-120-0340(T)	3-1-2008	Repeal	4-1-2008	461-135-1175	4-1-2008	Amend	5-1-2008
461-120-0345	3-1-2008	Amend	4-1-2008	461-135-1185(T)	3-1-2008	Repeal	4-1-2008
461-120-0345(T)	3-1-2008	Repeal	4-1-2008	461-135-1195	3-1-2008	Adopt	4-1-2008
461-125-0130	3-1-2008	Amend	4-1-2008	461-135-1250	3-1-2008	Adopt	4-1-2008
461-125-0130(T)	3-1-2008	Repeal	4-1-2008	461-135-1250(T)	3-1-2008	Repeal	4-1-2008
461-125-0260	3-1-2008	Adopt	4-1-2008	461-140-0040	4-1-2008	Amend	5-1-2008
461-125-0260(T)	3-1-2008	Repeal	4-1-2008	461-140-0220	1-1-2008	Amend	2-1-2008
461-125-0310	4-1-2008	Amend	5-1-2008	461-145-0030	1-1-2008	Amend	2-1-2008
461-125-0810	3-1-2008	Amend	4-1-2008	461-145-0080	3-1-2008	Amend	4-1-2008
461-125-0810(T)	3-1-2008	Repeal	4-1-2008	461-145-0080	3-21-2008	Amend(T)	5-1-2008
461-130-0305	3-1-2008	Amend	4-1-2008	461-145-0080(T)	3-1-2008	Repeal	4-1-2008
461-130-0305(T)	3-1-2008	Repeal	4-1-2008	461-145-0108	1-1-2008	Amend	2-1-2008
461-130-0310	3-1-2008	Amend	4-1-2008	461-145-0120	4-1-2008	Amend	5-1-2008
461-130-0310(T)	3-1-2008	Repeal	4-1-2008	461-145-0180	1-1-2008	Repeal	2-1-2008
461-130-0315	3-1-2008	Amend	4-1-2008	461-145-0220	1-1-2008	Amend	2-1-2008
461-130-0315(T)	3-1-2008	Repeal	4-1-2008	461-145-0370	4-1-2008	Amend	5-1-2008
461-130-0323	3-1-2008	Adopt	4-1-2008	461-145-0410	3-1-2008	Amend	4-1-2008
461-130-0323(T)	3-1-2008	Repeal	4-1-2008	461-145-0410(T)	3-1-2008	Repeal	4-1-2008
461-130-0325	3-1-2008	Amend	4-1-2008	461-145-0450(T)	4-1-2008	Repeal	5-1-2008
461-130-0325(T)	3-1-2008	Repeal	4-1-2008	461-145-0470	4-1-2008	Amend	5-1-2008
461-130-0327	3-1-2008	Amend	4-1-2008	461-145-0490	4-1-2008	Amend	5-1-2008
461-130-0327(T)	3-1-2008	Repeal	4-1-2008	461-145-0500	4-1-2008	Amend	5-1-2008
461-130-0330	3-1-2008	Amend	4-1-2008	461-145-0505	4-1-2008	Amend	5-1-2008
461-130-0330(T)	3-1-2008	Repeal	4-1-2008	461-145-0520	4-1-2008	Amend	5-1-2008
461-130-0335	3-1-2008	Amend	4-1-2008	461-145-0530	4-1-2008	Amend	5-1-2008
461-130-0335(T)	3-1-2008	Repeal	4-1-2008	461-145-0530	4-1-2008	Amend(T)	5-1-2008
461-135-0010	3-1-2008	Amend	4-1-2008	461-145-0550	4-1-2008	Amend	5-1-2008
461-135-0010(T)	3-1-2008	Repeal	4-1-2008	461-145-0580	1-1-2008	Amend	2-1-2008
461-135-0070	3-1-2008	Amend	4-1-2008	461-145-0585	4-1-2008	Amend	5-1-2008
461-135-0070(T)	3-1-2008	Repeal	4-1-2008	461-145-0910	4-1-2008	Amend	5-1-2008
461-135-0075	3-1-2008	Amend	4-1-2008	461-150-0047	1-1-2008	Amend	2-1-2008
461-135-0075(T)	3-1-2008	Repeal	4-1-2008	461-155-0150	3-1-2008	Amend	4-1-2008
461-135-0082	1-30-2008	Amend(T)	3-1-2008	461-155-0150(T)	3-1-2008	Repeal	4-1-2008
461-135-0082	2-22-2008	Amend(T)	4-1-2008	461-155-0180	1-24-2008	Amend(T)	3-1-2008
461-135-0085	3-1-2008	Amend	4-1-2008	461-155-0235	1-24-2008	Amend(T)	3-1-2008

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461-155-0250	3-1-2008	Amend(T)	4-1-2008	461-180-0085	1-1-2008	Amend	2-1-2008
461-155-0270	1-1-2008	Amend	2-1-2008	461-190-0051	3-1-2008	Amend	4-1-2008
461-155-0290	3-1-2008	Amend(T)	4-1-2008	461-190-0151(T)	3-1-2008	Repeal	4-1-2008
461-155-0290	4-1-2008	Amend	5-1-2008	461-190-0163	3-1-2008	Amend	4-1-2008
461-155-0290(T)	4-1-2008	Repeal	5-1-2008	461-190-0163(T)	3-1-2008	Repeal	4-1-2008
461-155-0291	3-1-2008	Amend(T)	4-1-2008	461-190-0171	3-1-2008	Amend	4-1-2008
461-155-0291	4-1-2008	Amend	5-1-2008	461-190-0171(T)	3-1-2008	Repeal	4-1-2008
461-155-0291(T)	4-1-2008	Repeal	5-1-2008	461-190-0201	10-1-2007	Suspend	2-1-2008
461-155-0295	3-1-2008	Amend(T)	4-1-2008	461-190-0201	3-1-2008	Repeal	4-1-2008
461-155-0295	4-1-2008	Amend	5-1-2008	461-190-0211	3-1-2008	Amend	4-1-2008
461-155-0295(T)	4-1-2008	Repeal	5-1-2008	461-190-0211(T)	3-1-2008	Repeal	4-1-2008
461-155-0300	1-1-2008	Amend	2-1-2008	461-190-0231	3-1-2008	Amend	4-1-2008
461-155-0320	1-1-2008	Amend(T)	2-1-2008	461-190-0231(T)	3-1-2008	Repeal	4-1-2008
461-155-0320	3-1-2008	Adopt	4-1-2008	461-190-0241	3-1-2008	Amend	4-1-2008
461-155-0320(T)	3-1-2008	Repeal	4-1-2008	461-190-0241(T)	3-1-2008	Repeal	4-1-2008
461-155-0670	3-1-2008	Amend	4-1-2008	461-190-0426	4-1-2008	Amend	5-1-2008
461-155-0670(T)	3-1-2008	Repeal	4-1-2008	461-195-0501	1-1-2008	Amend	2-1-2008
461-160-0030	4-1-2008	Amend	5-1-2008	461-195-0501	1-1-2008	Amend(T)	2-1-2008
461-160-0040	1-1-2008	Amend	2-1-2008	461-195-0501	3-1-2008	Amend	4-1-2008
461-160-0055	1-1-2008	Amend	2-1-2008	461-195-0501(T)	1-1-2008	Repeal	2-1-2008
461-160-0410	1-1-2008	Amend	2-1-2008	461-195-0501(T)	3-1-2008	Repeal	4-1-2008
461-160-0415	1-1-2008	Amend	2-1-2008	461-195-0511	1-1-2008	Amend	2-1-2008
461-160-0430	3-1-2008	Amend	4-1-2008	461-195-0521	1-1-2008	Amend	2-1-2008
461-160-0430(T)	3-1-2008	Repeal	4-1-2008	461-195-0521	4-1-2008	Amend	5-1-2008
461-160-0550	1-1-2008	Amend	2-1-2008	461-195-0551	1-1-2008	Amend	2-1-2008
461-160-0580	1-1-2008	Amend	2-1-2008	461-195-0551	1-1-2008	Amend(T)	2-1-2008
461-160-0620	1-1-2008	Amend	2-1-2008	461-195-0551	3-1-2008	Amend	4-1-2008
461-160-0800	3-1-2008	Amend(T)	4-1-2008	461-195-0551(T)	1-1-2008	Repeal	2-1-2008
461-160-0810	3-1-2008	Suspend	4-1-2008	461-195-0551(T)	3-1-2008	Repeal	4-1-2008
461-160-0820	3-1-2008	Suspend	4-1-2008	461-195-0561	3-1-2008	Amend	4-1-2008
461-160-0850	3-1-2008	Suspend	4-1-2008	461-195-0561(T)	3-1-2008	Repeal	4-1-2008
461-160-0855	1-1-2008	Adopt	2-1-2008	461-195-0601	3-1-2008	Amend	4-1-2008
461-165-0030	3-1-2008	Amend	4-1-2008	461-195-0601(T)	3-1-2008	Repeal	4-1-2008
461-165-0030(T)	3-1-2008	Repeal	4-1-2008	462-160-0110	11-28-2007	Amend(T)	1-1-2008
461-170-0020	3-1-2008	Amend	4-1-2008	462-160-0110	4-7-2008	Amend	5-1-2008
461-170-0020(T)	3-1-2008	Repeal	4-1-2008	462-160-0120	11-28-2007	Amend(T)	1-1-2008
461-170-0030	3-1-2008	Amend	4-1-2008	462-160-0120	4-7-2008	Amend	5-1-2008
461-170-0030(T)	3-1-2008	Repeal	4-1-2008	462-160-0130	11-28-2007	Amend(T)	1-1-2008
461-170-0130	1-1-2008	Amend	2-1-2008	462-160-0130	4-7-2008	Amend	5-1-2008
461-175-0050	4-1-2008	Amend	5-1-2008	462-200-0630	12-6-2007	Repeal	1-1-2008
461-175-0200	1-1-2008	Amend(T)	2-1-2008	471-010-0050	1-7-2008	Suspend	2-1-2008
461-175-0200	4-1-2008	Amend	5-1-2008	471-010-0051	1-7-2008	Suspend	2-1-2008
461-175-0200	4-7-2008	Amend(T)	5-1-2008	471-010-0052	1-7-2008	Suspend	2-1-2008
461-175-0200(T)	4-1-2008	Repeal	5-1-2008	471-010-0054	1-7-2008	Suspend	2-1-2008
461-175-0270	1-1-2008	Amend	2-1-2008	471-010-0055	1-7-2008	Suspend	2-1-2008
461-175-0340	1-1-2008	Amend(T)	2-1-2008	471-010-0057	1-7-2008	Suspend	2-1-2008
461-175-0340	4-1-2008	Amend	5-1-2008	471-010-0080	2-26-2008	Adopt(T)	4-1-2008
461-175-0340(T)	4-1-2008	Repeal	5-1-2008	471-010-0085	2-26-2008	Adopt(T)	4-1-2008
461-180-0010	3-1-2008	Amend	4-1-2008	471-010-0090	2-26-2008	Adopt(T)	4-1-2008
461-180-0010(T)	3-1-2008	Repeal	4-1-2008	471-010-0100	2-26-2008	Adopt(T)	4-1-2008
461-180-0020	3-1-2008	Amend	4-1-2008	471-010-0105	2-26-2008	Adopt(T)	4-1-2008
461-180-0020(T)	3-1-2008	Repeal	4-1-2008	471-010-0110	2-26-2008	Adopt(T)	4-1-2008
461-180-0070	3-1-2008	Amend	4-1-2008	471-010-0115	2-26-2008	Adopt(T)	4-1-2008
461-180-0070(T)	3-1-2008	Repeal	4-1-2008	471-010-0120	2-26-2008	Adopt(T)	4-1-2008
461-180-0081	3-1-2008	Amend	4-1-2008	471-010-0125	2-26-2008	Adopt(T)	4-1-2008

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471-030-0052	2-15-2008	Amend(T)	3-1-2008	576-008-0280	2-19-2008	Suspend	4-1-2008
471-041-0060	1-8-2008	Amend	2-1-2008	576-008-0282	2-19-2008	Suspend	4-1-2008
543-001-0005	1-17-2008	Amend	3-1-2008	576-008-0285	2-19-2008	Suspend	4-1-2008
571-040-0010	2-19-2008	Suspend	4-1-2008	576-008-0287	2-19-2008	Suspend	4-1-2008
571-040-0015	2-19-2008	Suspend	4-1-2008	576-008-0290	2-19-2008	Suspend	4-1-2008
571-040-0020	2-19-2008	Suspend	4-1-2008	576-008-0292	2-19-2008	Suspend	4-1-2008
571-040-0030	2-19-2008	Suspend	4-1-2008	576-008-0295	2-19-2008	Suspend	4-1-2008
571-040-0040	2-19-2008	Suspend	4-1-2008	577-001-0001	4-21-2008	Suspend	5-1-2008
571-040-0050	2-19-2008	Suspend	4-1-2008	577-001-0005	4-21-2008	Amend(T)	5-1-2008
571-040-0060	2-19-2008	Suspend	4-1-2008	577-001-0010	4-21-2008	Amend(T)	5-1-2008
571-040-0070	2-19-2008	Suspend	4-1-2008	577-001-0014	4-21-2008	Suspend	5-1-2008
571-040-0080	2-19-2008	Suspend	4-1-2008	577-001-0015	4-21-2008	Suspend	5-1-2008
571-040-0100	2-19-2008	Suspend	4-1-2008	577-001-0020	4-21-2008	Amend(T)	5-1-2008
571-040-0201	2-19-2008	Suspend	4-1-2008	577-001-0025	4-21-2008	Amend(T)	5-1-2008
571-040-0251	2-19-2008	Suspend	4-1-2008	577-001-0030	4-21-2008	Suspend	5-1-2008
571-040-0261	2-19-2008	Suspend	4-1-2008	577-001-0035	4-21-2008	Amend(T)	5-1-2008
571-040-0380	2-19-2008	Suspend	4-1-2008	577-001-0040	4-21-2008	Amend(T)	5-1-2008
571-040-0382	2-19-2008	Suspend	4-1-2008	577-001-0041	4-21-2008	Amend(T)	5-1-2008
571-040-0390	2-19-2008	Suspend	4-1-2008	577-001-0045	4-21-2008	Amend(T)	5-1-2008
571-040-0400	2-19-2008	Suspend	4-1-2008	577-001-0050	4-21-2008	Amend(T)	5-1-2008
571-040-0410	2-19-2008	Suspend	4-1-2008	577-030-0005	5-1-2008	Amend(T)	5-1-2008
571-040-0420	2-19-2008	Suspend	4-1-2008	577-030-0010	5-1-2008	Amend(T)	5-1-2008
571-040-0430	2-19-2008	Suspend	4-1-2008	577-030-0015	5-1-2008	Amend(T)	5-1-2008
571-040-0440	2-19-2008	Suspend	4-1-2008	577-030-0016	5-1-2008	Adopt(T)	5-1-2008
571-040-0450	2-19-2008	Suspend	4-1-2008	577-030-0020	5-1-2008	Amend(T)	5-1-2008
571-040-0460	2-19-2008	Suspend	4-1-2008	577-030-0021	5-1-2008	Adopt(T)	5-1-2008
573-035-0040	3-14-2008	Amend	4-1-2008	577-030-0025	5-1-2008	Amend(T)	5-1-2008
573-040-0005	4-15-2008	Amend	5-1-2008	577-030-0030	5-1-2008	Amend(T)	5-1-2008
573-075-0100	3-14-2008	Amend	4-1-2008	577-030-0035	1-1-2008	Amend(T)	2-1-2008
573-095-0010	3-14-2008	Amend	4-1-2008	577-030-0040	5-1-2008	Amend(T)	5-1-2008
574-050-0005	2-1-2008	Amend	3-1-2008	577-030-0045	5-1-2008	Amend(T)	5-1-2008
575-095-0005	1-9-2008	Adopt	2-1-2008	577-030-0050	5-1-2008	Amend(T)	5-1-2008
575-095-0010	1-9-2008	Adopt	2-1-2008	577-030-0060	5-1-2008	Amend(T)	5-1-2008
575-095-0015	1-9-2008	Adopt	2-1-2008	577-030-0065	5-1-2008	Amend(T)	5-1-2008
575-095-0020	1-9-2008	Adopt	2-1-2008	577-030-0070	5-1-2008	Amend(T)	5-1-2008
575-095-0025	1-9-2008	Adopt	2-1-2008	577-030-0075	5-1-2008	Suspend	5-1-2008
575-095-0030	1-9-2008	Adopt	2-1-2008	577-030-0080	5-1-2008	Am. & Ren.(T)	5-1-2008
575-095-0035	1-9-2008	Adopt	2-1-2008	579-020-0006	3-14-2008	Amend	4-1-2008
575-095-0040	1-9-2008	Adopt	2-1-2008	579-020-0008	4-15-2008	Suspend	5-1-2008
575-095-0045	1-9-2008	Adopt	2-1-2008	579-020-0012	4-15-2008	Suspend	5-1-2008
576-008-0200	2-19-2008	Suspend	4-1-2008	579-020-0017	4-15-2008	Suspend	5-1-2008
576-008-0205	2-19-2008	Suspend	4-1-2008	579-030-0005	3-14-2008	Amend	4-1-2008
576-008-0210	2-19-2008	Suspend	4-1-2008	579-030-0010	3-14-2008	Amend	4-1-2008
576-008-0215	2-19-2008	Suspend	4-1-2008	579-030-0015	3-14-2008	Amend	4-1-2008
576-008-0220	2-19-2008	Suspend	4-1-2008	579-030-0020	3-14-2008	Amend	4-1-2008
576-008-0223	2-19-2008	Suspend	4-1-2008	580-023-0005	2-19-2008	Suspend	4-1-2008
576-008-0225	2-19-2008	Suspend	4-1-2008	580-023-0010	2-19-2008	Suspend	4-1-2008
576-008-0228	2-19-2008	Suspend	4-1-2008	580-023-0015	2-19-2008	Suspend	4-1-2008
576-008-0230	2-19-2008	Suspend	4-1-2008	580-023-0020	2-19-2008	Suspend	4-1-2008
576-008-0235	2-19-2008	Suspend	4-1-2008	580-023-0025	2-19-2008	Suspend	4-1-2008
576-008-0240	2-19-2008	Suspend	4-1-2008	580-023-0030	2-19-2008	Suspend	4-1-2008
576-008-0245	2-19-2008	Suspend	4-1-2008	580-023-0035	2-19-2008	Suspend	4-1-2008
576-008-0255	2-19-2008	Suspend	4-1-2008	580-023-0040	2-19-2008	Suspend	4-1-2008
576-008-0260	2-19-2008	Suspend	4-1-2008	580-023-0045	2-19-2008	Suspend	4-1-2008
576-008-0275	2-19-2008	Suspend	4-1-2008	580-023-0050	2-19-2008	Suspend	4-1-2008

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580-023-0060	2-19-2008	Suspend	4-1-2008	580-050-0105	2-19-2008	Suspend	4-1-2008
580-023-0065	2-19-2008	Suspend	4-1-2008	580-060-0000	2-19-2008	Adopt(T)	4-1-2008
580-023-0105	2-19-2008	Adopt(T)	4-1-2008	580-060-0005	2-19-2008	Adopt(T)	4-1-2008
580-023-0110	2-19-2008	Adopt(T)	4-1-2008	580-060-0010	2-19-2008	Adopt(T)	4-1-2008
580-023-0115	2-19-2008	Adopt(T)	4-1-2008	580-060-0015	2-19-2008	Adopt(T)	4-1-2008
580-023-0120	2-19-2008	Adopt(T)	4-1-2008	580-060-0020	2-19-2008	Adopt(T)	4-1-2008
580-023-0125	2-19-2008	Adopt(T)	4-1-2008	580-060-0025	2-19-2008	Adopt(T)	4-1-2008
580-023-0130	2-19-2008	Adopt(T)	4-1-2008	580-060-0030	2-19-2008	Adopt(T)	4-1-2008
580-023-0135	2-19-2008	Adopt(T)	4-1-2008	580-060-0035	2-19-2008	Adopt(T)	4-1-2008
580-023-0140	2-19-2008	Adopt(T)	4-1-2008	580-060-0040	2-19-2008	Adopt(T)	4-1-2008
580-023-0145	2-19-2008	Adopt(T)	4-1-2008	580-060-0045	2-19-2008	Adopt(T)	4-1-2008
580-023-0150	2-19-2008	Adopt(T)	4-1-2008	580-060-0050	2-19-2008	Adopt(T)	4-1-2008
580-040-0035	1-14-2008	Amend	2-1-2008	580-060-0055	2-19-2008	Adopt(T)	4-1-2008
580-040-0040	3-20-2008	Amend(T)	5-1-2008	580-060-0060	2-19-2008	Adopt(T)	4-1-2008
580-040-0100	2-19-2008	Suspend	4-1-2008	580-061-0000	2-19-2008	Adopt(T)	4-1-2008
580-040-0200	2-19-2008	Suspend	4-1-2008	580-061-0005	2-19-2008	Adopt(T)	4-1-2008
580-040-0205	2-19-2008	Suspend	4-1-2008	580-061-0010	2-19-2008	Adopt(T)	4-1-2008
580-040-0210	2-19-2008	Suspend	4-1-2008	580-061-0015	2-19-2008	Adopt(T)	4-1-2008
580-040-0215	2-19-2008	Suspend	4-1-2008	580-061-0020	2-19-2008	Adopt(T)	4-1-2008
580-040-0220	2-19-2008	Suspend	4-1-2008	580-061-0025	2-19-2008	Adopt(T)	4-1-2008
580-040-0223	2-19-2008	Suspend	4-1-2008	580-061-0030	2-19-2008	Adopt(T)	4-1-2008
580-040-0225	2-19-2008	Suspend	4-1-2008	580-061-0035	2-19-2008	Adopt(T)	4-1-2008
580-040-0230	2-19-2008	Suspend	4-1-2008	580-061-0040	2-19-2008	Adopt(T)	4-1-2008
580-040-0235	2-19-2008	Suspend	4-1-2008	580-061-0045	2-19-2008	Adopt(T)	4-1-2008
580-040-0240	2-19-2008	Suspend	4-1-2008	580-061-0050	2-19-2008	Adopt(T)	4-1-2008
580-040-0245	2-19-2008	Suspend	4-1-2008	580-061-0055	2-19-2008	Adopt(T)	4-1-2008
580-040-0255	2-19-2008	Suspend	4-1-2008	580-061-0060	2-19-2008	Adopt(T)	4-1-2008
580-040-0260	2-19-2008	Suspend	4-1-2008	580-061-0065	2-19-2008	Adopt(T)	4-1-2008
580-040-0275	2-19-2008	Suspend	4-1-2008	580-061-0070	2-19-2008	Adopt(T)	4-1-2008
580-040-0277	2-19-2008	Suspend	4-1-2008	580-061-0075	2-19-2008	Adopt(T)	4-1-2008
580-040-0280	2-19-2008	Suspend	4-1-2008	580-061-0080	2-19-2008	Adopt(T)	4-1-2008
580-040-0285	2-19-2008	Suspend	4-1-2008	580-061-0085	2-19-2008	Adopt(T)	4-1-2008
580-040-0290	2-19-2008	Suspend	4-1-2008	580-061-0090	2-19-2008	Adopt(T)	4-1-2008
580-040-0292	2-19-2008	Suspend	4-1-2008	580-061-0095	2-19-2008	Adopt(T)	4-1-2008
580-040-0295	2-19-2008	Suspend	4-1-2008	580-061-0100	2-19-2008	Adopt(T)	4-1-2008
580-042-0010	2-19-2008	Amend(T)	4-1-2008	580-061-0105	2-19-2008	Adopt(T)	4-1-2008
580-043-0060	1-14-2008	Amend	2-1-2008	580-061-0110	2-19-2008	Adopt(T)	4-1-2008
580-043-0065	1-14-2008	Amend	2-1-2008	580-061-0115	2-19-2008	Adopt(T)	4-1-2008
580-043-0070	1-14-2008	Amend	2-1-2008	580-061-0120	2-19-2008	Adopt(T)	4-1-2008
580-043-0075	1-14-2008	Amend	2-1-2008	580-061-0125	2-19-2008	Adopt(T)	4-1-2008
580-043-0085	1-14-2008	Amend	2-1-2008	580-061-0130	2-19-2008	Adopt(T)	4-1-2008
580-043-0090	1-14-2008	Amend	2-1-2008	580-061-0135	2-19-2008	Adopt(T)	4-1-2008
580-043-0095	1-14-2008	Amend	2-1-2008	580-061-0140	2-19-2008	Adopt(T)	4-1-2008
580-043-0100	1-14-2008	Adopt	2-1-2008	580-061-0145	2-19-2008	Adopt(T)	4-1-2008
580-050-0001	2-19-2008	Suspend	4-1-2008	580-061-0150	2-19-2008	Adopt(T)	4-1-2008
580-050-0005	2-19-2008	Suspend	4-1-2008	580-061-0155	2-19-2008	Adopt(T)	4-1-2008
580-050-0010	2-19-2008	Suspend	4-1-2008	580-061-0160	2-19-2008	Adopt(T)	4-1-2008
580-050-0015	2-19-2008	Suspend	4-1-2008	580-062-0000	2-19-2008	Adopt(T)	4-1-2008
580-050-0020	2-19-2008	Suspend	4-1-2008	580-062-0005	2-19-2008	Adopt(T)	4-1-2008
580-050-0025	2-19-2008	Suspend	4-1-2008	580-062-0010	2-19-2008	Adopt(T)	4-1-2008
580-050-0032	2-19-2008	Suspend	4-1-2008	580-062-0015	2-19-2008	Adopt(T)	4-1-2008
580-050-0033	2-19-2008	Suspend	4-1-2008	580-062-0020	2-19-2008	Adopt(T)	4-1-2008
580-050-0040	2-19-2008	Suspend	4-1-2008	580-063-0000	2-19-2008	Adopt(T)	4-1-2008
580-050-0041	2-19-2008	Suspend	4-1-2008	580-063-0005	2-19-2008	Adopt(T)	4-1-2008
580-050-0042	2-19-2008	Suspend	4-1-2008	580-063-0010	2-19-2008	Adopt(T)	4-1-2008

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580-063-0020	2-19-2008	Adopt(T)	4-1-2008	584-010-0045	4-15-2008	Amend	5-1-2008
580-063-0025	2-19-2008	Adopt(T)	4-1-2008	584-010-0050	4-15-2008	Amend	5-1-2008
580-063-0030	2-19-2008	Adopt(T)	4-1-2008	584-010-0055	4-15-2008	Amend	5-1-2008
580-063-0035	2-19-2008	Adopt(T)	4-1-2008	584-010-0060	4-15-2008	Amend	5-1-2008
580-063-0040	2-19-2008	Adopt(T)	4-1-2008	584-010-0065	4-15-2008	Repeal	5-1-2008
580-063-0045	2-19-2008	Adopt(T)	4-1-2008	584-010-0070	4-15-2008	Repeal	5-1-2008
581-011-0140	1-25-2008	Amend	3-1-2008	584-010-0080	4-15-2008	Amend	5-1-2008
581-015-0055	2-22-2008	Repeal	4-1-2008	584-010-0090	4-15-2008	Amend	5-1-2008
581-015-0065	2-22-2008	Repeal	4-1-2008	584-010-0100	4-15-2008	Amend	5-1-2008
581-015-2570	12-12-2007	Amend	1-1-2008	584-010-0120	4-15-2008	Repeal	5-1-2008
581-015-2595	12-12-2007	Amend	1-1-2008	584-010-0130	4-15-2008	Am. & Ren.	5-1-2008
581-019-0033	2-22-2008	Adopt(T)	4-1-2008	584-010-0130	4-15-2008	Repeal	5-1-2008
581-020-0060	1-25-2008	Amend	3-1-2008	584-010-0140	4-15-2008	Amend	5-1-2008
581-020-0065	1-25-2008	Amend	3-1-2008	584-017-0001	4-15-2008	Am. & Ren.	5-1-2008
581-020-0070	1-25-2008	Amend	3-1-2008	584-017-0175	4-15-2008	Amend	5-1-2008
581-020-0075	1-25-2008	Amend	3-1-2008	584-017-0185	2-15-2008	Amend(T)	3-1-2008
581-020-0080	1-25-2008	Amend	3-1-2008	584-017-0350	4-15-2008	Repeal	5-1-2008
581-020-0085	1-25-2008	Amend	3-1-2008	584-017-0351	12-14-2007	Adopt	1-1-2008
581-020-0090	1-25-2008	Amend	3-1-2008	584-017-0355	4-15-2008	Amend	5-1-2008
581-020-0250	12-12-2007	Adopt	1-1-2008	584-017-0442	4-15-2008	Repeal	5-1-2008
581-020-0359	3-21-2008	Adopt	5-1-2008	584-017-0452	4-15-2008	Repeal	5-1-2008
581-020-0361	3-21-2008	Adopt	5-1-2008	584-019-0002	12-14-2007	Amend	1-1-2008
581-022-1065	1-25-2008	Amend	3-1-2008	584-019-0003	12-14-2007	Amend	1-1-2008
581-022-1661	12-12-2007	Adopt	1-1-2008	584-019-0020	12-14-2007	Repeal	1-1-2008
581-022-1940	12-12-2007	Amend	1-1-2008	584-019-0025	12-14-2007	Amend	1-1-2008
581-022-1941	12-12-2007	Adopt	1-1-2008	584-019-0035	12-14-2007	Amend	1-1-2008
581-023-0035	2-22-2008	Amend	4-1-2008	584-019-0040	12-14-2007	Amend	1-1-2008
581-023-0040	3-21-2008	Amend	5-1-2008	584-020-0000	12-14-2007	Amend	1-1-2008
581-023-0041	2-22-2008	Amend	4-1-2008	584-020-0005	12-14-2007	Amend	1-1-2008
581-023-0104	12-12-2007	Amend	1-1-2008	584-020-0010	12-14-2007	Amend	1-1-2008
581-024-0285	12-12-2007	Amend	1-1-2008	584-020-0015	12-14-2007	Amend	1-1-2008
582-001-0010	2-4-2008	Amend	3-1-2008	584-020-0020	12-14-2007	Amend	1-1-2008
582-001-0010	3-3-2008	Amend	4-1-2008	584-020-0025	12-14-2007	Amend	1-1-2008
582-001-0010	4-10-2008	Amend	5-1-2008	584-020-0030	12-14-2007	Amend	1-1-2008
582-030-0005	2-4-2008	Amend	3-1-2008	584-020-0035	12-14-2007	Amend	1-1-2008
582-030-0008	2-4-2008	Amend	3-1-2008	584-020-0040	12-14-2007	Amend	1-1-2008
582-070-0020	2-4-2008	Amend	3-1-2008	584-020-0041	12-14-2007	Amend	1-1-2008
582-070-0020	3-3-2008	Amend	4-1-2008	584-023-0005	12-14-2007	Amend	1-1-2008
582-070-0020	4-10-2008	Amend	5-1-2008	584-023-0015	12-14-2007	Amend	1-1-2008
582-070-0025	2-4-2008	Amend	3-1-2008	584-023-0025	12-14-2007	Amend	1-1-2008
582-070-0030	2-4-2008	Amend	3-1-2008	584-036-0067	4-15-2008	Amend	5-1-2008
582-080-0020	3-3-2008	Amend	4-1-2008	584-038-0004	4-15-2008	Amend	5-1-2008
583-050-0011	2-7-2008	Amend	3-1-2008	584-038-0080	12-14-2007	Amend	1-1-2008
583-070-0002	4-14-2008	Adopt	5-1-2008	584-038-0335	12-14-2007	Amend	1-1-2008
583-070-0011	4-14-2008	Adopt	5-1-2008	584-038-0336	12-14-2007	Amend	1-1-2008
583-070-0015	4-14-2008	Adopt	5-1-2008	584-040-0080	12-14-2007	Amend	1-1-2008
583-070-0020	4-14-2008	Adopt	5-1-2008	584-040-0310	12-14-2007	Amend	1-1-2008
584-005-0005	4-15-2008	Amend	5-1-2008	584-040-0315	12-14-2007	Amend	1-1-2008
584-010-0006	4-15-2008	Adopt	5-1-2008	584-044-0011	4-15-2008	Amend	5-1-2008
584-010-0010	4-15-2008	Amend	5-1-2008	584-044-0015	4-15-2008	Amend	5-1-2008
584-010-0015	4-15-2008	Amend	5-1-2008	584-044-0023	4-15-2008	Amend	5-1-2008
584-010-0020	4-15-2008	Amend	5-1-2008	584-046-0020	4-15-2008	Amend	5-1-2008
584-010-0025	4-15-2008	Amend	5-1-2008	584-046-0024	4-15-2008	Amend	5-1-2008
584-010-0030	4-15-2008	Amend	5-1-2008	584-048-0105	4-15-2008	Amend	5-1-2008
584-010-0035	4-15-2008	Amend	5-1-2008	584-050-0002	12-14-2007	Amend	1-1-2008

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584-050-0006	12-14-2007	Amend	1-1-2008	603-052-0130	2-8-2008	Repeal	3-1-2008
584-050-0009	12-14-2007	Amend	1-1-2008	603-052-0132	2-8-2008	Repeal	3-1-2008
584-050-0012	12-14-2007	Amend	1-1-2008	603-052-0134	2-8-2008	Repeal	3-1-2008
584-050-0015	12-14-2007	Amend	1-1-2008	603-052-0136	2-8-2008	Repeal	3-1-2008
584-050-0016	12-14-2007	Amend	1-1-2008	603-052-0138	2-8-2008	Repeal	3-1-2008
584-050-0018	12-14-2007	Amend	1-1-2008	603-052-0140	2-8-2008	Repeal	3-1-2008
584-050-0019	12-14-2007	Amend	1-1-2008	603-052-0142	2-8-2008	Repeal	3-1-2008
584-050-0020	12-14-2007	Amend	1-1-2008	603-052-0145	2-8-2008	Repeal	3-1-2008
584-050-0035	12-14-2007	Amend	1-1-2008	603-052-0347	1-11-2008	Amend	2-1-2008
584-050-0040	12-14-2007	Amend	1-1-2008	603-052-0360	2-8-2008	Amend	3-1-2008
584-050-0042	12-14-2007	Amend	1-1-2008	603-052-0395	2-28-2008	Adopt	4-1-2008
584-050-0065	12-14-2007	Amend	1-1-2008	603-052-0880	1-7-2008	Amend	2-1-2008
584-050-0066	12-14-2007	Amend	1-1-2008	603-052-1200	3-7-2008	Amend	4-1-2008
584-050-0067	12-14-2007	Amend	1-1-2008	603-052-1221	2-8-2008	Amend	3-1-2008
584-050-0070	12-14-2007	Amend	1-1-2008	603-052-1230	1-16-2008	Amend	3-1-2008
584-052-0015	4-15-2008	Amend	5-1-2008	603-052-1240	1-7-2008	Amend	2-1-2008
584-052-0032	12-14-2007	Amend	1-1-2008	603-052-1250	1-16-2008	Amend	3-1-2008
584-060-0002	4-15-2008	Amend	5-1-2008	603-054-0016	1-7-2008	Amend	2-1-2008
584-060-0012	12-14-2007	Amend	1-1-2008	603-054-0016	4-15-2008	Amend	5-1-2008
584-060-0012	4-15-2008	Amend	5-1-2008	603-054-0017	1-7-2008	Amend	2-1-2008
584-060-0014	4-15-2008	Amend	5-1-2008	603-054-0017	4-15-2008	Amend	5-1-2008
584-060-0051	2-15-2008	Amend(T)	3-1-2008	603-054-0018	1-7-2008	Amend	2-1-2008
584-060-0052	4-15-2008	Amend	5-1-2008	603-054-0018	4-15-2008	Amend	5-1-2008
584-060-0210	4-15-2008	Amend	5-1-2008	603-054-0024	1-7-2008	Amend	2-1-2008
584-065-0070	4-15-2008	Amend	5-1-2008	603-054-0035	2-15-2008	Amend	3-1-2008
584-065-0080	4-15-2008	Amend	5-1-2008	620-020-0010	1-25-2008	Adopt	3-1-2008
584-070-0011	12-14-2007	Repeal	1-1-2008	620-020-0020	1-25-2008	Adopt	3-1-2008
584-070-0014	12-14-2007	Amend	1-1-2008	620-020-0030	1-25-2008	Adopt	3-1-2008
584-070-0021	12-14-2007	Repeal	1-1-2008	623-040-0005	12-3-2007	Adopt	1-1-2008
584-070-0132	4-15-2008	Amend	5-1-2008	623-040-0010	12-3-2007	Adopt	1-1-2008
584-070-0320	4-15-2008	Repeal	5-1-2008	623-040-0015	12-3-2007	Adopt	1-1-2008
603-011-0610	11-28-2007	Amend	1-1-2008	629-001-0005	3-7-2008	Amend	4-1-2008
603-011-0620	11-28-2007	Amend	1-1-2008	629-043-0040	1-1-2008	Amend	2-1-2008
603-014-0016	2-6-2008	Amend	3-1-2008	629-043-0041	1-1-2008	Repeal	2-1-2008
603-014-0055	2-6-2008	Amend	3-1-2008	629-043-0043	1-1-2008	Repeal	2-1-2008
603-014-0065	2-6-2008	Amend	3-1-2008	629-048-0001	1-1-2008	Adopt	2-1-2008
603-014-0095	2-6-2008	Amend	3-1-2008	629-048-0005	1-1-2008	Adopt	2-1-2008
603-014-0100	2-6-2008	Repeal	3-1-2008	629-048-0010	1-1-2008	Adopt	2-1-2008
603-014-0135	2-6-2008	Amend	3-1-2008	629-048-0020	1-1-2008	Adopt	2-1-2008
603-027-0410	2-15-2008	Amend	3-1-2008	629-048-0100	1-1-2008	Adopt	2-1-2008
603-027-0410	3-17-2008	Amend(T)	4-1-2008	629-048-0110	1-1-2008	Adopt	2-1-2008
603-027-0420	11-29-2007	Amend(T)	1-1-2008	629-048-0120	1-1-2008	Adopt	2-1-2008
603-027-0420	2-15-2008	Amend	3-1-2008	629-048-0130	1-1-2008	Adopt	2-1-2008
603-027-0420	3-17-2008	Amend(T)	4-1-2008	629-048-0140	1-1-2008	Adopt	2-1-2008
603-027-0420(T)	11-29-2007	Suspend	1-1-2008	629-048-0150	1-1-2008	Adopt	2-1-2008
603-027-0430	11-29-2007	Amend(T)	1-1-2008	629-048-0160	1-1-2008	Adopt	2-1-2008
603-027-0430	2-15-2008	Amend	3-1-2008	629-048-0200	1-1-2008	Adopt	2-1-2008
603-027-0430	3-17-2008	Amend(T)	4-1-2008	629-048-0210	1-1-2008	Adopt	2-1-2008
603-027-0430(T)	11-29-2007	Suspend	1-1-2008	629-048-0220	1-1-2008	Adopt	2-1-2008
603-027-0440	2-15-2008	Amend	3-1-2008	629-048-0230	1-1-2008	Adopt	2-1-2008
603-027-0440	3-17-2008	Amend(T)	4-1-2008	629-048-0300	1-1-2008	Adopt	2-1-2008
603-027-0470	2-15-2008	Amend	3-1-2008	629-048-0310	1-1-2008	Adopt	2-1-2008
603-027-0490	2-15-2008	Amend	3-1-2008	629-048-0320	1-1-2008	Adopt	2-1-2008
603-027-0490	3-17-2008	Amend(T)	4-1-2008	629-048-0330	1-1-2008	Adopt	2-1-2008
603-052-0127	2-8-2008	Amend	3-1-2008	629-048-0400	1-1-2008	Adopt	2-1-2008

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629-048-0500	1-1-2008	Adopt	2-1-2008	635-018-0080	1-1-2008	Amend	2-1-2008
635-001-0210	1-1-2008	Amend	2-1-2008	635-018-0090	1-1-2008	Amend	2-1-2008
635-003-0004	3-15-2008	Amend(T)	4-1-2008	635-018-0090	4-15-2008	Amend(T)	5-1-2008
635-004-0018	1-1-2008	Amend	1-1-2008	635-018-0090	5-1-2008	Amend(T)	5-1-2008
635-004-0019	11-28-2007	Amend(T)	1-1-2008	635-019-0080	1-1-2008	Amend	2-1-2008
635-004-0019	12-11-2007	Amend(T)	1-1-2008	635-019-0090	1-1-2008	Amend	2-1-2008
635-004-0019(T)	11-28-2007	Suspend	1-1-2008	635-021-0080	1-1-2008	Amend	2-1-2008
635-004-0027	1-1-2008	Amend(T)	2-1-2008	635-021-0090	1-1-2008	Amend	2-1-2008
635-004-0033	11-28-2007	Amend(T)	1-1-2008	635-023-0080	1-1-2008	Amend	2-1-2008
635-004-0033	1-1-2008	Amend	1-1-2008	635-023-0090	1-1-2008	Amend	2-1-2008
635-004-0033(T)	11-28-2007	Suspend	1-1-2008	635-023-0095	1-1-2008	Amend	2-1-2008
635-004-0170	11-28-2007	Amend(T)	1-1-2008	635-023-0095	1-1-2008	Amend(T)	2-1-2008
635-004-0170	1-1-2008	Amend	1-1-2008	635-023-0095	2-11-2008	Amend	3-1-2008
635-005-0005	1-23-2008	Amend	3-1-2008	635-023-0095	3-15-2008	Amend(T)	4-1-2008
635-005-0055	12-11-2007	Amend(T)	1-1-2008	635-023-0095	3-26-2008	Amend(T)	5-1-2008
635-005-0055	12-14-2007	Amend(T)	1-1-2008	635-023-0095(T)	1-1-2008	Suspend	2-1-2008
635-005-0055	12-14-2007	Suspend	1-1-2008	635-023-0095(T)	2-11-2008	Repeal	3-1-2008
635-005-0055	3-25-2008	Amend(T)	5-1-2008	635-023-0125	1-1-2008	Amend	2-1-2008
635-005-0055(T)	3-25-2008	Suspend	5-1-2008	635-023-0125	2-25-2008	Amend(T)	4-1-2008
635-005-0064	1-23-2008	Amend	3-1-2008	635-023-0125	2-27-2008	Amend(T)	4-1-2008
635-005-0065	1-23-2008	Amend	3-1-2008	635-023-0128	1-1-2008	Amend	2-1-2008
635-005-0066	1-23-2008	Amend	3-1-2008	635-023-0130	1-1-2008	Amend	2-1-2008
635-006-0225	4-1-2008	Amend(T)	5-1-2008	635-039-0080	1-1-2008	Amend	2-1-2008
635-006-0230	4-1-2008	Amend(T)	5-1-2008	635-039-0090	1-1-2008	Amend	2-1-2008
635-006-0232	1-15-2008	Amend	2-1-2008	635-041-0050	2-11-2008	Amend	3-1-2008
635-006-0850	1-1-2008	Amend(T)	2-1-2008	635-041-0065	1-31-2008	Amend(T)	3-1-2008
635-006-0850	1-23-2008	Amend	3-1-2008	635-041-0065	2-29-2008	Amend(T)	4-1-2008
635-006-0850(T)	1-23-2008	Repeal	3-1-2008	635-041-0065	3-5-2008	Amend(T)	4-1-2008
635-006-0910	1-23-2008	Amend	3-1-2008	635-041-0065	3-10-2008	Amend(T)	4-1-2008
635-006-0930	1-23-2008	Amend	3-1-2008	635-041-0065(T)	3-10-2008	Suspend	4-1-2008
635-006-1015	1-15-2008	Amend	2-1-2008	635-042-0010	2-11-2008	Amend	3-1-2008
635-006-1065	1-15-2008	Amend	2-1-2008	635-042-0022	4-1-2008	Amend(T)	5-1-2008
635-006-1075	1-15-2008	Amend	2-1-2008	635-042-0022	4-8-2008	Amend(T)	5-1-2008
635-011-0100	1-1-2008	Amend	2-1-2008	635-042-0022	4-15-2008	Amend(T)	5-1-2008
635-013-0003	1-1-2008	Amend	2-1-2008	635-042-0022(T)	4-15-2008	Suspend	5-1-2008
635-013-0004	1-1-2008	Amend	2-1-2008	635-042-0110	5-12-2008	Amend(T)	4-1-2008
635-013-0004	3-15-2008	Amend(T)	4-1-2008	635-042-0130	12-1-2007	Amend(T)	1-1-2008
635-013-0009	3-15-2008	Amend(T)	4-1-2008	635-042-0130	1-1-2008	Amend(T)	2-1-2008
635-014-0080	1-1-2008	Amend	2-1-2008	635-042-0130	2-11-2008	Amend	3-1-2008
635-014-0090	1-1-2008	Amend	2-1-2008	635-042-0130(T)	1-1-2008	Suspend	2-1-2008
635-014-0090	3-15-2008	Amend(T)	4-1-2008	635-042-0130(T)	2-11-2008	Repeal	3-1-2008
635-016-0080	1-1-2008	Amend	2-1-2008	635-042-0135	1-1-2008	Amend(T)	2-1-2008
635-016-0090	1-1-2008	Amend	2-1-2008	635-042-0135	1-31-2008	Amend(T)	3-1-2008
635-016-0090	1-1-2008	Amend	2-1-2008	635-042-0135	2-11-2008	Amend	3-1-2008
635-017-0080	1-1-2008	Amend	2-1-2008	635-042-0135	2-21-2008	Amend(T)	4-1-2008
635-017-0090	1-1-2008	Amend	2-1-2008	635-042-0135(T)	1-31-2008	Suspend	3-1-2008
635-017-0090	1-1-2008	Amend	2-1-2008	635-042-0135(T)	2-11-2008	Repeal	3-1-2008
635-017-0090	1-9-2008	Amend(T)	2-1-2008	635-042-0145	1-31-2008	Amend(T)	3-1-2008
635-017-0090	2-1-2008	Amend(T)	3-1-2008	635-042-0145	3-2-2008	Amend(T)	4-1-2008
635-017-0090	3-1-2008	Amend(T)	4-1-2008	635-042-0145	3-30-2008	Amend(T)	5-1-2008
635-017-0090(T)	2-1-2008	Suspend	3-1-2008	635-042-0145(T)	3-2-2008	Suspend	4-1-2008
635-017-0095	1-1-2008	Amend	2-1-2008	635-042-0145(T)	3-30-2008	Suspend	5-1-2008
635-017-0095	1-1-2008	Amend(T)	2-1-2008	635-042-0160	1-31-2008	Amend(T)	3-1-2008
635-017-0095	2-11-2008	Amend	3-1-2008	635-042-0160	3-2-2008	Amend(T)	4-1-2008
635-017-0095(T)	1-1-2008	Suspend	2-1-2008	635-042-0160(T)	3-2-2008	Suspend	4-1-2008

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635-042-0180	3-2-2008	Amend(T)	4-1-2008	660-021-0070	2-13-2008	Amend	3-1-2008
635-042-0180(T)	3-2-2008	Suspend	4-1-2008	660-021-0080	2-13-2008	Amend	3-1-2008
635-048-0005	1-1-2008	Amend	2-1-2008	660-025-0040	2-13-2008	Amend	3-1-2008
635-048-0010	1-1-2008	Amend	2-1-2008	660-027-0005	2-13-2008	Adopt	3-1-2008
635-048-0030	1-1-2008	Amend	2-1-2008	660-027-0010	2-13-2008	Adopt	3-1-2008
635-055-0000	2-21-2008	Amend	4-1-2008	660-027-0020	2-13-2008	Adopt	3-1-2008
635-055-0000	2-29-2008	Amend	4-1-2008	660-027-0030	2-13-2008	Adopt	3-1-2008
635-055-0020	2-21-2008	Amend	4-1-2008	660-027-0040	2-13-2008	Adopt	3-1-2008
635-055-0020	2-29-2008	Amend	4-1-2008	660-027-0050	2-13-2008	Adopt	3-1-2008
635-055-0030	2-21-2008	Amend	4-1-2008	660-027-0060	2-13-2008	Adopt	3-1-2008
635-055-0030	2-29-2008	Amend	4-1-2008	660-027-0070	2-13-2008	Adopt	3-1-2008
635-055-0035	2-21-2008	Amend	4-1-2008	660-027-0080	2-13-2008	Adopt	3-1-2008
635-055-0035	2-29-2008	Amend	4-1-2008	660-041-0000	12-10-2007	Amend(T)	1-1-2008
635-055-0075	2-21-2008	Amend	4-1-2008	660-041-0000	2-21-2008	Amend(T)	4-1-2008
635-055-0075	2-29-2008	Amend	4-1-2008	660-041-0010	12-10-2007	Amend(T)	1-1-2008
635-056-0010	11-19-2007	Amend	1-1-2008	660-041-0010	2-21-2008	Amend(T)	4-1-2008
635-056-0020	11-19-2007	Amend	1-1-2008	660-041-0020	2-21-2008	Amend(T)	4-1-2008
635-057-0000	11-19-2007	Adopt	1-1-2008	660-041-0030	12-10-2007	Amend(T)	1-1-2008
635-060-0023	12-1-2007	Amend	1-1-2008	660-041-0030	2-21-2008	Amend(T)	4-1-2008
635-079-0000	2-21-2008	Adopt	4-1-2008	660-041-0040	12-10-2007	Amend(T)	1-1-2008
635-079-0005	2-21-2008	Adopt	4-1-2008	660-041-0040	2-21-2008	Amend(T)	4-1-2008
635-079-0010	2-21-2008	Adopt	4-1-2008	660-041-0050	12-10-2007	Suspend	1-1-2008
635-200-0090	12-31-2007	Amend(T)	2-1-2008	660-041-0050	2-21-2008	Suspend	4-1-2008
641-020-0010	3-22-2008	Adopt	3-1-2008	660-041-0060	12-10-2007	Adopt(T)	1-1-2008
641-020-0020	3-22-2008	Adopt	3-1-2008	660-041-0060	2-21-2008	Adopt(T)	4-1-2008
641-020-0030	3-22-2008	Adopt	3-1-2008	660-041-0070	12-10-2007	Adopt(T)	1-1-2008
642-020-0010	3-22-2008	Adopt	3-1-2008	660-041-0070	2-21-2008	Adopt(T)	4-1-2008
642-020-0020	3-22-2008	Adopt	3-1-2008	660-041-0080	2-21-2008	Adopt(T)	4-1-2008
642-020-0030	3-22-2008	Adopt	3-1-2008	660-041-0090	2-21-2008	Adopt(T)	4-1-2008
644-040-0010	2-15-2008	Adopt	3-1-2008	660-041-0100	2-21-2008	Adopt(T)	4-1-2008
644-040-0020	2-15-2008	Adopt	3-1-2008	660-041-0500	12-10-2007	Adopt(T)	1-1-2008
644-040-0030	2-15-2008	Adopt	3-1-2008	660-041-0500	2-21-2008	Adopt(T)	4-1-2008
646-040-0000	1-23-2008	Adopt	3-1-2008	660-041-0510	12-10-2007	Adopt(T)	1-1-2008
646-040-0010	1-23-2008	Adopt	3-1-2008	660-041-0510	2-21-2008	Adopt(T)	4-1-2008
646-040-0020	1-23-2008	Adopt	3-1-2008	660-041-0520	12-10-2007	Adopt(T)	1-1-2008
647-040-0000	4-1-2008	Adopt	4-1-2008	660-041-0520	2-21-2008	Adopt(T)	4-1-2008
647-040-0010	4-1-2008	Adopt	4-1-2008	660-041-0530	12-10-2007	Adopt(T)	1-1-2008
647-040-0020	4-1-2008	Adopt	4-1-2008	660-041-0530	2-21-2008	Adopt(T)	4-1-2008
655-040-0000	4-1-2008	Adopt	3-1-2008	664-020-0010	4-1-2008	Adopt	3-1-2008
655-040-0010	4-1-2008	Adopt	3-1-2008	664-020-0020	4-1-2008	Adopt	3-1-2008
655-040-0020	4-1-2008	Adopt	3-1-2008	664-020-0030	4-1-2008	Adopt	3-1-2008
657-020-0010	3-22-2008	Adopt	3-1-2008	670-020-0010	3-22-2008	Adopt	3-1-2008
657-020-0020	3-22-2008	Adopt	3-1-2008	670-020-0020	3-22-2008	Adopt	3-1-2008
657-020-0030	3-22-2008	Adopt	3-1-2008	670-020-0030	3-22-2008	Adopt	3-1-2008
660-002-0010	12-10-2007	Amend(T)	1-1-2008	678-030-0000	1-11-2008	Adopt	2-1-2008
660-002-0010	2-21-2008	Amend(T)	4-1-2008	678-030-0010	1-11-2008	Adopt	2-1-2008
660-002-0015	12-10-2007	Amend(T)	1-1-2008	678-030-0020	1-11-2008	Adopt	2-1-2008
660-002-0015	2-21-2008	Amend(T)	4-1-2008	678-030-0030	1-11-2008	Adopt	2-1-2008
660-004-0040	2-13-2008	Amend	3-1-2008	695-003-0010	3-25-2008	Adopt	5-1-2008
660-011-0060	2-13-2008	Amend	3-1-2008	695-003-0020	3-25-2008	Adopt	5-1-2008
660-021-0010	2-13-2008	Amend	3-1-2008	695-003-0030	3-25-2008	Adopt	5-1-2008
660-021-0020	2-13-2008	Amend	3-1-2008	695-003-0040	3-25-2008	Adopt	5-1-2008
660-021-0030	2-13-2008	Amend	3-1-2008	731-001-0025	12-24-2007	Amend	2-1-2008
660-021-0040	2-13-2008	Amend	3-1-2008	731-005-0450	1-24-2008	Amend(T)	3-1-2008
660-021-0050	2-13-2008	Amend	3-1-2008	731-005-0550	12-24-2007	Amend(T)	2-1-2008

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734-010-0260	1-24-2008	Amend(T)	3-1-2008	735-070-0010	2-4-2008	Amend(T)	3-1-2008
734-059-0020	12-24-2007	Adopt	2-1-2008	735-070-0080	1-1-2008	Amend	1-1-2008
734-059-0025	12-24-2007	Adopt	2-1-2008	735-070-0190	12-24-2007	Amend	2-1-2008
734-059-0030	12-24-2007	Adopt	2-1-2008	735-072-0035	1-1-2008	Amend	2-1-2008
734-059-0050	12-24-2007	Adopt	2-1-2008	735-074-0080	1-1-2008	Amend	2-1-2008
735-010-0045	12-24-2007	Amend	2-1-2008	735-074-0140	1-1-2008	Amend	2-1-2008
735-010-0130	2-4-2008	Amend(T)	3-1-2008	735-074-0180	1-1-2008	Amend	2-1-2008
735-016-0030	2-4-2008	Amend	3-1-2008	735-074-0260	1-1-2008	Am. & Ren.	2-1-2008
735-016-0040	2-4-2008	Amend	3-1-2008	735-074-0270	1-1-2008	Am. & Ren.	2-1-2008
735-020-0075	11-30-2007	Adopt	1-1-2008	735-074-0280	1-1-2008	Am. & Ren.	2-1-2008
735-024-0070	1-1-2008	Amend(T)	2-1-2008	735-074-0290	1-1-2008	Am. & Ren.	2-1-2008
735-024-0080	1-1-2008	Amend(T)	2-1-2008	735-076-0002	1-1-2008	Amend	2-1-2008
735-028-0100	3-21-2008	Amend	5-1-2008	735-076-0005	2-22-2008	Amend(T)	4-1-2008
735-030-0300	1-1-2008	Adopt	2-1-2008	735-076-0007	1-1-2008	Amend	2-1-2008
735-030-0310	1-1-2008	Adopt	2-1-2008	735-076-0018	1-1-2008	Amend	2-1-2008
735-030-0320	1-1-2008	Adopt	2-1-2008	735-076-0020	1-1-2008	Amend	2-1-2008
735-030-0330	1-1-2008	Adopt	2-1-2008	735-076-0035	1-1-2008	Amend	2-1-2008
735-032-0020	1-1-2008	Amend(T)	2-1-2008	735-080-0010	1-1-2008	Repeal	2-1-2008
735-032-0050	1-1-2008	Amend	2-1-2008	735-080-0020	1-1-2008	Amend	2-1-2008
735-040-0040	1-1-2008	Amend(T)	2-1-2008	735-080-0030	1-1-2008	Repeal	2-1-2008
735-040-0050	1-1-2008	Amend(T)	2-1-2008	735-080-0040	1-1-2008	Amend	2-1-2008
735-040-0080	1-1-2008	Amend(T)	2-1-2008	735-080-0080	1-1-2008	Amend	2-1-2008
735-040-0090	1-1-2008	Amend(T)	2-1-2008	735-090-0000	12-24-2007	Amend	2-1-2008
735-040-0100	1-1-2008	Amend(T)	2-1-2008	735-090-0020	12-24-2007	Amend	2-1-2008
735-046-0010	1-1-2008	Amend(T)	2-1-2008	735-090-0051	12-24-2007	Amend	2-1-2008
735-046-0050	1-1-2008	Amend(T)	2-1-2008	735-090-0120	12-24-2007	Amend	2-1-2008
735-050-0000	2-4-2008	Amend	3-1-2008	735-090-0130	12-24-2007	Amend	2-1-2008
735-050-0060	2-4-2008	Amend	3-1-2008	735-152-0000	1-1-2008	Amend(T)	2-1-2008
735-050-0062	2-4-2008	Amend	3-1-2008	735-152-0040	1-1-2008	Amend(T)	2-1-2008
735-050-0064	2-4-2008	Amend	3-1-2008	735-152-0050	1-1-2008	Amend(T)	2-1-2008
735-060-0120	1-1-2008	Amend	2-1-2008	735-152-0060	1-1-2008	Amend(T)	2-1-2008
735-062-0000	1-1-2008	Amend	2-1-2008	735-158-0000	11-30-2007	Amend	1-1-2008
735-062-0000	2-4-2008	Amend(T)	3-1-2008	735-160-0115	12-24-2007	Amend	2-1-2008
735-062-0005	2-4-2008	Amend(T)	3-1-2008	736-002-0010	2-15-2008	Amend	3-1-2008
735-062-0010	2-4-2008	Amend(T)	3-1-2008	736-002-0020	2-15-2008	Amend	3-1-2008
735-062-0020	2-4-2008	Amend(T)	3-1-2008	736-002-0030	2-15-2008	Amend	3-1-2008
735-062-0021	2-4-2008	Adopt(T)	3-1-2008	736-002-0032	2-15-2008	Adopt	3-1-2008
735-062-0030	2-4-2008	Amend	3-1-2008	736-002-0038	2-15-2008	Adopt	3-1-2008
735-062-0030	2-4-2008	Amend(T)	3-1-2008	736-002-0040	2-15-2008	Repeal	3-1-2008
735-062-0050	1-1-2008	Amend	2-1-2008	736-002-0042	2-15-2008	Adopt	3-1-2008
735-062-0073	1-1-2008	Amend	2-1-2008	736-002-0050	2-15-2008	Adopt	3-1-2008
735-062-0090	1-1-2008	Amend	2-1-2008	736-002-0052	2-15-2008	Adopt	3-1-2008
735-062-0090	2-4-2008	Amend(T)	3-1-2008	736-002-0058	2-15-2008	Adopt	3-1-2008
735-062-0090	2-22-2008	Amend(T)	4-1-2008	736-002-0060	2-15-2008	Repeal	3-1-2008
735-062-0110	2-4-2008	Amend(T)	3-1-2008	736-002-0070	2-15-2008	Amend	3-1-2008
735-062-0200	1-1-2008	Amend	2-1-2008	736-002-0080	2-15-2008	Repeal	3-1-2008
735-062-0320	1-1-2008	Amend	2-1-2008	736-002-0082	2-15-2008	Adopt	3-1-2008
735-062-0330	1-1-2008	Amend	2-1-2008	736-002-0090	2-15-2008	Repeal	3-1-2008
735-062-0380	1-1-2008	Amend	2-1-2008	736-002-0092	2-15-2008	Adopt	3-1-2008
735-062-0390	1-1-2008	Adopt	2-1-2008	736-002-0100	2-15-2008	Repeal	3-1-2008
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735-064-0040	1-1-2008	Amend	2-1-2008	736-002-0150	2-15-2008	Adopt	3-1-2008
735-064-0070	1-1-2008	Amend	1-1-2008	736-002-0160	2-15-2008	Adopt	3-1-2008
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736-006-0140	3-1-2008	Amend	3-1-2008	806-010-0035	2-28-2008	Amend	4-1-2008
736-006-0150	3-1-2008	Amend	3-1-2008	806-010-0090	7-1-2008	Amend	4-1-2008
736-054-0005	2-15-2008	Amend	3-1-2008	806-010-0105	7-1-2008	Amend	4-1-2008
736-054-0010	2-15-2008	Amend	3-1-2008	806-010-0145	7-1-2008	Amend	4-1-2008
736-054-0015	2-15-2008	Amend	3-1-2008	808-001-0020	1-1-2008	Amend	2-1-2008
736-054-0025	2-15-2008	Amend	3-1-2008	808-001-0020	1-1-2008	Amend	2-1-2008
740-100-0010	4-1-2008	Amend	5-1-2008	808-001-0020	4-11-2008	Amend	5-1-2008
740-100-0060	4-1-2008	Amend	5-1-2008	808-002-0020	1-1-2008	Amend	2-1-2008
740-100-0070	4-1-2008	Amend	5-1-2008	808-002-0210	1-1-2008	Amend	2-1-2008
740-100-0080	4-1-2008	Amend	5-1-2008	808-002-0220	1-1-2008	Amend	2-1-2008
740-100-0090	4-1-2008	Amend	5-1-2008	808-002-0220	1-1-2008	Amend	2-1-2008
740-100-0140	3-21-2008	Am. & Ren.	5-1-2008	808-002-0220	4-11-2008	Amend	5-1-2008
740-110-0010	4-1-2008	Amend	5-1-2008	808-002-0280	1-1-2008	Amend	2-1-2008
740-300-0140	3-21-2008	Am. & Ren.	5-1-2008	808-002-0325	1-1-2008	Amend	2-1-2008
800-010-0015	2-1-2008	Amend	2-1-2008	808-002-0328	1-1-2008	Amend	2-1-2008
800-010-0017	2-1-2008	Amend	2-1-2008	808-002-0330	1-1-2008	Amend	2-1-2008
800-010-0025	2-1-2008	Amend	2-1-2008	808-002-0500	1-1-2008	Amend	2-1-2008
800-010-0030	2-1-2008	Amend	2-1-2008	808-002-0540	1-1-2008	Amend	2-1-2008
800-010-0041	2-1-2008	Amend	2-1-2008	808-002-0590	1-1-2008	Adopt	2-1-2008
800-015-0005	2-1-2008	Amend	2-1-2008	808-002-0625	1-1-2008	Adopt	2-1-2008
800-015-0010	2-1-2008	Amend	2-1-2008	808-002-0665	1-1-2008	Amend	2-1-2008
800-015-0015	2-1-2008	Adopt	2-1-2008	808-002-0870	1-1-2008	Amend	2-1-2008
800-015-0030	2-1-2008	Amend	2-1-2008	808-002-0900	1-1-2008	Amend	2-1-2008
800-020-0015	2-1-2008	Amend	2-1-2008	808-002-0920	1-1-2008	Amend	2-1-2008
800-020-0020	2-1-2008	Amend	2-1-2008	808-003-0010	1-1-2008	Amend	2-1-2008
800-020-0022	2-1-2008	Amend	2-1-2008	808-003-0015	1-1-2008	Amend	2-1-2008
800-020-0025	2-1-2008	Amend	2-1-2008	808-003-0015	1-1-2008	Amend	2-1-2008
800-020-0026	2-1-2008	Amend	2-1-2008	808-003-0015	4-11-2008	Amend	5-1-2008
800-020-0030	2-1-2008	Amend	2-1-2008	808-003-0018	4-11-2008	Amend	5-1-2008
800-020-0031	2-1-2008	Amend	2-1-2008	808-003-0020	1-1-2008	Amend	2-1-2008
800-020-0035	2-1-2008	Amend	2-1-2008	808-003-0030	1-1-2008	Amend	2-1-2008
800-025-0020	2-1-2008	Amend	2-1-2008	808-003-0035	1-1-2008	Amend	2-1-2008
800-025-0023	2-1-2008	Amend	2-1-2008	808-003-0035	1-1-2008	Amend	2-1-2008
800-025-0025	2-1-2008	Amend	2-1-2008	808-003-0035	4-11-2008	Amend	5-1-2008
800-025-0030	2-1-2008	Amend	2-1-2008	808-003-0040	1-1-2008	Amend	2-1-2008
800-025-0060	2-1-2008	Amend	2-1-2008	808-003-0040	1-1-2008	Amend	2-1-2008
800-025-0070	2-1-2008	Amend	2-1-2008	808-003-0040	4-11-2008	Amend	5-1-2008
800-030-0025	2-1-2008	Amend	2-1-2008	808-003-0045	1-1-2008	Amend	2-1-2008
800-030-0050	2-1-2008	Amend	2-1-2008	808-003-0045	1-1-2008	Amend	2-1-2008
801-001-0035	1-1-2008	Amend	2-1-2008	808-003-0060	1-1-2008	Amend	2-1-2008
801-010-0340	1-1-2008	Amend	2-1-2008	808-003-0090	1-1-2008	Amend	2-1-2008
801-030-0010	1-1-2008	Amend	2-1-2008	808-003-0095	1-1-2008	Amend	2-1-2008
801-030-0015	1-1-2008	Amend	2-1-2008	808-003-0100	1-1-2008	Amend	2-1-2008
801-030-0020	1-1-2008	Amend	2-1-2008	808-003-0105	1-1-2008	Amend	2-1-2008
801-040-0030	1-1-2008	Amend	2-1-2008	808-003-0110	1-1-2008	Amend	2-1-2008
804-022-0010	2-4-2008	Amend	3-1-2008	808-003-0112	1-1-2008	Amend	2-1-2008
804-025-0020	2-4-2008	Amend	3-1-2008	808-003-0125	1-1-2008	Amend	2-1-2008
804-030-0015	2-4-2008	Am. & Ren.	3-1-2008	808-003-0130	1-1-2008	Amend	2-1-2008
804-030-0020	3-20-2008	Amend	5-1-2008	808-003-0130	1-1-2008	Amend	2-1-2008
804-030-0035	2-4-2008	Am. & Ren.	3-1-2008	808-003-0130	4-11-2008	Amend	5-1-2008
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804-040-0000	3-20-2008	Amend	5-1-2008	808-003-018	1-1-2008	Amend	2-1-2008
806-010-0010	2-28-2008	Amend	4-1-2008	808-003-0200	1-1-2008	Amend	2-1-2008
806-010-0015	2-28-2008	Repeal	4-1-2008	808-003-0220	1-1-2008	Amend	2-1-2008

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808-003-0230	1-1-2008	Amend	2-1-2008	812-002-0580	1-1-2008	Amend	1-1-2008
808-003-0230	1-1-2008	Amend	2-1-2008	812-002-0630	1-1-2008	Adopt	1-1-2008
808-003-0230	4-11-2008	Amend	5-1-2008	812-002-0635	1-1-2008	Adopt	1-1-2008
808-003-0235	1-1-2008	Amend	2-1-2008	812-002-0640	1-1-2008	Amend	1-1-2008
808-003-0255	1-1-2008	Amend	2-1-2008	812-002-0760	1-1-2008	Amend	1-1-2008
808-003-0440	1-1-2008	Amend	2-1-2008	812-002-0840	1-1-2008	Repeal	1-1-2008
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808-004-0120	4-11-2008	Amend	5-1-2008	812-003-0131	7-1-2008	Adopt	4-1-2008
808-004-0250	1-1-2008	Amend	2-1-2008	812-003-0140	1-10-2008	Amend(T)	2-1-2008
808-004-0320	1-1-2008	Amend	2-1-2008	812-003-0140	7-1-2008	Amend	4-1-2008
808-004-0340	1-1-2008	Amend	2-1-2008	812-003-0150	1-1-2008	Amend	1-1-2008
808-004-0340	1-1-2008	Amend	2-1-2008	812-003-0152	7-1-2008	Adopt	4-1-2008
808-004-0400	1-1-2008	Amend	2-1-2008	812-003-0153	7-1-2008	Adopt	4-1-2008
808-004-0450	1-1-2008	Amend	2-1-2008	812-003-0155	1-1-2008	Adopt	1-1-2008
808-004-0530	1-1-2008	Adopt	2-1-2008	812-003-0155	7-1-2008	Amend	4-1-2008
808-004-0540	1-1-2008	Amend	2-1-2008	812-003-0160	1-1-2008	Amend	1-1-2008
808-004-0600	1-1-2008	Amend	2-1-2008	812-003-0170	1-1-2008	Amend	1-1-2008
808-005-0020	1-1-2008	Amend	2-1-2008	812-003-0170	7-1-2008	Amend	4-1-2008
808-005-0020	1-1-2008	Amend	2-1-2008	812-003-0171	7-1-2008	Adopt	4-1-2008
808-005-0020	4-11-2008	Amend	5-1-2008	812-003-0175	1-1-2008	Amend	1-1-2008
808-009-0360	1-14-2008	Suspend	2-1-2008	812-003-0175	7-1-2008	Amend	4-1-2008
808-009-0360	3-7-2008	Repeal	4-1-2008	812-003-0180	1-1-2008	Amend	1-1-2008
808-030-0010	1-1-2008	Adopt	2-1-2008	812-003-0190	1-1-2008	Amend	1-1-2008
808-030-0020	1-1-2008	Adopt	2-1-2008	812-003-0200	1-1-2008	Amend	1-1-2008
808-030-0030	1-1-2008	Adopt	2-1-2008	812-003-0200	7-1-2008	Amend	4-1-2008
808-030-0040	1-1-2008	Adopt	2-1-2008	812-003-0220	7-1-2008	Amend	4-1-2008
808-030-0050	1-1-2008	Adopt	2-1-2008	812-003-0221	7-1-2008	Adopt	4-1-2008
808-030-0060	1-1-2008	Adopt	2-1-2008	812-003-0230	7-1-2008	Amend	4-1-2008
808-030-0070	1-1-2008	Adopt	2-1-2008	812-003-0240	1-1-2008	Amend	1-1-2008
808-040-0010	1-1-2008	Adopt	2-1-2008	812-003-0250	1-1-2008	Amend	1-1-2008
808-040-0020	1-1-2008	Adopt	2-1-2008	812-003-0260	1-1-2008	Amend	1-1-2008
808-040-0025	1-1-2008	Adopt	2-1-2008	812-003-0260	3-24-2008	Amend	5-1-2008
808-040-0030	1-1-2008	Adopt	2-1-2008	812-003-0260	7-1-2008	Amend	4-1-2008
808-040-0040	1-1-2008	Adopt	2-1-2008	812-003-0270	1-10-2008	Amend(T)	2-1-2008
808-040-0050	1-1-2008	Adopt	2-1-2008	812-003-0270	7-1-2008	Amend	4-1-2008
808-040-0060	1-1-2008	Adopt	2-1-2008	812-003-0280	1-1-2008	Amend	1-1-2008
808-040-0070	1-1-2008	Adopt	2-1-2008	812-003-0280	7-1-2008	Amend	4-1-2008
808-040-0080	1-1-2008	Adopt	2-1-2008	812-003-0290	1-1-2008	Amend	1-1-2008
809-030-0025	3-20-2008	Amend	5-1-2008	812-003-0290	7-1-2008	Amend	4-1-2008
811-001-0005	1-31-2008	Amend	1-1-2008	812-003-0300	1-1-2008	Amend	1-1-2008
811-010-0085	11-30-2007	Amend	1-1-2008	812-003-0300	7-1-2008	Amend	4-1-2008
811-010-0086	11-30-2007	Amend	1-1-2008	812-003-0310	1-1-2008	Amend	1-1-2008
811-010-0090	11-30-2007	Amend	1-1-2008	812-003-0340	7-1-2008	Amend	4-1-2008
811-010-0093	11-30-2007	Amend	1-1-2008	812-003-0360	7-1-2008	Amend	4-1-2008
811-015-0010	11-30-2007	Amend	1-1-2008	812-003-0380	1-1-2008	Amend	1-1-2008
811-015-0025	11-30-2007	Amend	1-1-2008	812-003-0400	1-1-2008	Amend	1-1-2008
811-021-0005	11-30-2007	Amend	1-1-2008	812-003-0420	7-1-2008	Amend	4-1-2008
812-001-0200	1-1-2008	Amend	1-1-2008	812-003-0440	7-1-2008	Amend	4-1-2008
812-001-0200	1-2-2008	Amend(T)	2-1-2008	812-003-0450	7-1-2008	Amend	4-1-2008
812-002-0140	1-1-2008	Amend	1-1-2008	812-004-0240	1-1-2008	Amend	1-1-2008
812-002-0143	1-1-2008	Amend	1-1-2008	812-004-0250	1-1-2008	Amend	1-1-2008
812-002-0170	1-1-2008	Adopt	1-1-2008	812-004-0260	1-1-2008	Amend	1-1-2008
812-002-0265	1-1-2008	Adopt	1-1-2008	812-004-0560	1-1-2008	Amend	1-1-2008
812-002-0320	7-1-2008	Amend	4-1-2008	812-004-0590	1-1-2008	Amend	1-1-2008
812-002-0380	7-1-2008	Amend	4-1-2008	812-004-0600	1-1-2008	Amend	1-1-2008

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812-005-0200	1-1-2008	Amend	1-1-2008	813-140-0050	12-18-2007	Amend(T)	2-1-2008
812-005-0210	1-1-2008	Amend	1-1-2008	813-140-0090	12-18-2007	Amend(T)	2-1-2008
812-005-0250	1-1-2008	Amend	1-1-2008	813-140-0095	12-18-2007	Adopt(T)	2-1-2008
812-005-0270	1-1-2008	Adopt	1-1-2008	813-220-0001	3-31-2008	Amend	5-1-2008
812-005-0270	7-1-2008	Amend	4-1-2008	813-220-0005	3-31-2008	Amend	5-1-2008
812-005-0800	1-2-2008	Amend(T)	2-1-2008	813-220-0010	3-31-2008	Amend	5-1-2008
812-005-0800	7-1-2008	Amend	4-1-2008	813-220-0015	3-31-2008	Amend	5-1-2008
812-007-0040	7-1-2008	Amend	4-1-2008	813-220-0020	3-31-2008	Amend	5-1-2008
812-008-0030	7-1-2008	Amend	4-1-2008	813-220-0030	3-31-2008	Amend	5-1-2008
812-008-0040	1-1-2008	Amend	1-1-2008	813-220-0050	3-31-2008	Amend	5-1-2008
812-008-0040	7-1-2008	Amend	4-1-2008	813-220-0060	3-31-2008	Amend	5-1-2008
812-008-0060	1-1-2008	Amend	1-1-2008	813-250-0000	4-11-2008	Amend	5-1-2008
812-008-0070	1-1-2008	Amend	1-1-2008	813-250-0010	4-11-2008	Amend	5-1-2008
812-008-0110	1-1-2008	Amend	1-1-2008	813-250-0020	4-11-2008	Amend	5-1-2008
812-009-0140	1-1-2008	Amend	1-1-2008	813-250-0030	4-11-2008	Amend	5-1-2008
812-010-0420	1-1-2008	Amend	1-1-2008	813-250-0040	4-11-2008	Amend	5-1-2008
812-010-0470	1-1-2008	Amend	1-1-2008	813-300-0010	3-18-2008	Amend	5-1-2008
812-012-0110	1-1-2008	Adopt	1-1-2008	813-300-0010(T)	3-18-2008	Repeal	5-1-2008
812-012-0130	1-1-2008	Adopt	1-1-2008	813-300-0020	3-18-2008	Amend	5-1-2008
812-012-0130	1-18-2008	Amend(T)	3-1-2008	813-300-0020(T)	3-18-2008	Repeal	5-1-2008
813-110-0005	4-11-2008	Amend	5-1-2008	813-300-0030	3-18-2008	Amend	5-1-2008
813-110-0005(T)	4-11-2008	Repeal	5-1-2008	813-300-0030(T)	3-18-2008	Repeal	5-1-2008
813-110-0010	4-11-2008	Amend	5-1-2008	813-300-0060	3-18-2008	Amend	5-1-2008
813-110-0010(T)	4-11-2008	Repeal	5-1-2008	813-300-0060(T)	3-18-2008	Repeal	5-1-2008
813-110-0013	4-11-2008	Adopt	5-1-2008	813-300-0080	3-18-2008	Amend	5-1-2008
813-110-0013(T)	4-11-2008	Repeal	5-1-2008	813-300-0080(T)	3-18-2008	Repeal	5-1-2008
813-110-0015	4-11-2008	Amend	5-1-2008	813-300-0100	3-18-2008	Amend	5-1-2008
813-110-0015(T)	4-11-2008	Repeal	5-1-2008	813-300-0100(T)	3-18-2008	Repeal	5-1-2008
813-110-0020	4-11-2008	Amend	5-1-2008	813-300-0120	3-18-2008	Amend	5-1-2008
813-110-0020(T)	4-11-2008	Repeal	5-1-2008	813-300-0120(T)	3-18-2008	Repeal	5-1-2008
813-110-0021	4-11-2008	Amend	5-1-2008	818-001-0087	11-30-2007	Amend	1-1-2008
813-110-0021(T)	4-11-2008	Repeal	5-1-2008	818-012-0030	11-30-2007	Amend	1-1-2008
813-110-0022	4-11-2008	Amend	5-1-2008	818-021-0060	11-30-2007	Amend	1-1-2008
813-110-0022(T)	4-11-2008	Repeal	5-1-2008	818-021-0070	11-30-2007	Amend	1-1-2008
813-110-0025	4-11-2008	Amend	5-1-2008	818-035-0030	11-30-2007	Amend	1-1-2008
813-110-0025(T)	4-11-2008	Repeal	5-1-2008	818-035-0040	11-30-2007	Amend	1-1-2008
813-110-0030	4-11-2008	Amend	5-1-2008	818-035-0065	11-30-2007	Amend	1-1-2008
813-110-0030(T)	4-11-2008	Repeal	5-1-2008	818-042-0040	11-30-2007	Amend	1-1-2008
813-110-0035	4-11-2008	Amend	5-1-2008	818-042-0060	11-30-2007	Amend	1-1-2008
813-110-0035(T)	4-11-2008	Repeal	5-1-2008	818-042-0095	11-30-2007	Adopt	1-1-2008
813-120-0001	1-28-2008	Amend	3-1-2008	820-010-0236	3-12-2008	Adopt	4-1-2008
813-120-0010	1-28-2008	Amend	3-1-2008	820-010-0300	3-12-2008	Amend	4-1-2008
813-120-0020	1-28-2008	Amend	3-1-2008	820-010-0305	3-12-2008	Amend	4-1-2008
813-120-0030	1-28-2008	Am. & Ren.	3-1-2008	820-010-0325	3-12-2008	Amend	4-1-2008
813-120-0040	1-28-2008	Amend	3-1-2008	820-010-0415	3-12-2008	Amend	4-1-2008
813-120-0050	1-28-2008	Amend	3-1-2008	820-010-0425	3-12-2008	Amend	4-1-2008
813-120-0060	1-28-2008	Amend	3-1-2008	820-010-0427	3-12-2008	Amend	4-1-2008
813-120-0070	1-28-2008	Amend	3-1-2008	820-010-0450	3-12-2008	Amend	4-1-2008
813-120-0080	1-28-2008	Amend	3-1-2008	820-010-0605	3-12-2008	Amend	4-1-2008
813-120-0090	1-28-2008	Amend	3-1-2008	834-010-0030	4-9-2008	Amend	5-1-2008
813-120-0100	1-28-2008	Am. & Ren.	3-1-2008	836-009-0007	12-11-2007	Amend(T)	1-1-2008
813-120-0110	1-28-2008	Amend	3-1-2008	836-042-0045	4-7-2008	Amend	5-1-2008
813-120-0120	1-28-2008	Amend	3-1-2008	836-043-0068	4-7-2008	Amend	5-1-2008
813-120-0130	1-28-2008	Amend	3-1-2008	836-052-0500	1-1-2008	Amend	1-1-2008
813-120-0140	1-28-2008	Amend	3-1-2008	836-052-0508	1-1-2008	Adopt	1-1-2008

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836-052-0526	1-1-2008	Amend	1-1-2008	837-020-0115	11-30-2007	Amend(T)	1-1-2008
836-052-0531	1-1-2008	Adopt	1-1-2008	837-020-0115	5-1-2008	Amend	5-1-2008
836-052-0546	1-1-2008	Amend	1-1-2008	837-035-0000	11-16-2007	Adopt	1-1-2008
836-052-0556	1-1-2008	Amend	1-1-2008	837-035-0020	11-16-2007	Adopt	1-1-2008
836-052-0566	1-1-2008	Amend	1-1-2008	837-035-0040	11-16-2007	Adopt	1-1-2008
836-052-0576	1-1-2008	Amend	1-1-2008	837-035-0060	11-16-2007	Adopt	1-1-2008
836-052-0616	1-1-2008	Amend	1-1-2008	837-035-0080	11-16-2007	Adopt	1-1-2008
836-052-0626	1-1-2008	Amend	1-1-2008	837-035-0100	11-16-2007	Adopt	1-1-2008
836-052-0636	1-1-2008	Amend	1-1-2008	837-035-0120	11-16-2007	Adopt	1-1-2008
836-052-0639	1-1-2008	Adopt	1-1-2008	837-035-0140	11-16-2007	Adopt	1-1-2008
836-052-0656	1-1-2008	Amend	1-1-2008	837-035-0160	11-16-2007	Adopt	1-1-2008
836-052-0666	1-1-2008	Amend	1-1-2008	837-035-0180	11-16-2007	Adopt	1-1-2008
836-052-0676	1-1-2008	Amend	1-1-2008	837-035-0200	11-16-2007	Adopt	1-1-2008
836-052-0696	1-1-2008	Amend	1-1-2008	837-035-0220	11-16-2007	Adopt	1-1-2008
836-052-0700	1-1-2008	Am. & Ren.	1-1-2008	837-035-0240	11-16-2007	Adopt	1-1-2008
836-052-0706	1-1-2008	Amend	1-1-2008	837-035-0260	11-16-2007	Adopt	1-1-2008
836-052-0726	1-1-2008	Amend	1-1-2008	837-035-0280	11-16-2007	Adopt	1-1-2008
836-052-0736	1-1-2008	Amend	1-1-2008	837-035-0300	11-16-2007	Adopt	1-1-2008
836-052-0738	1-1-2008	Adopt	1-1-2008	837-035-0320	11-16-2007	Adopt	1-1-2008
836-052-0740	1-1-2008	Adopt	1-1-2008	837-035-0340	11-16-2007	Adopt	1-1-2008
836-052-0746	1-1-2008	Amend	1-1-2008	839-001-0150	1-1-2008	Amend	2-1-2008
836-052-0756	1-1-2008	Amend	1-1-2008	839-001-0153	1-1-2008	Amend	2-1-2008
836-052-0766	1-1-2008	Amend	1-1-2008	839-001-0157	1-1-2008	Repeal	2-1-2008
836-052-0776	1-1-2008	Amend	1-1-2008	839-001-0160	1-1-2008	Amend	2-1-2008
836-052-0786	1-1-2008	Amend	1-1-2008	839-001-0495	1-1-2008	Adopt	2-1-2008
836-052-1000	1-1-2008	Adopt	2-1-2008	839-001-0496	1-1-2008	Adopt	2-1-2008
836-053-0016	2-11-2008	Repeal	3-1-2008	839-001-0740	1-1-2008	Amend	2-1-2008
836-053-0021	2-11-2008	Amend	3-1-2008	839-001-0760	1-1-2008	Amend	2-1-2008
836-053-0026	2-11-2008	Repeal	3-1-2008	839-002-0015	1-1-2008	Adopt	2-1-2008
836-053-0030	2-11-2008	Amend	3-1-2008	839-002-0020	1-1-2008	Adopt	2-1-2008
836-053-0040	2-11-2008	Amend	3-1-2008	839-002-0025	1-1-2008	Adopt	2-1-2008
836-053-0050	2-11-2008	Amend	3-1-2008	839-002-0030	1-1-2008	Adopt	2-1-2008
836-053-0060	2-11-2008	Amend	3-1-2008	839-002-0035	1-1-2008	Adopt	2-1-2008
836-053-0065	2-11-2008	Amend	3-1-2008	839-002-0040	1-1-2008	Adopt	2-1-2008
836-053-0065(T)	2-11-2008	Repeal	3-1-2008	839-002-0045	1-1-2008	Adopt	2-1-2008
836-053-0910	12-21-2007	Amend(T)	2-1-2008	839-002-0050	1-1-2008	Adopt	2-1-2008
836-054-0050	1-16-2008	Repeal	3-1-2008	839-002-0055	1-1-2008	Adopt	2-1-2008
836-054-0055	1-16-2008	Repeal	3-1-2008	839-002-0060	1-1-2008	Adopt	2-1-2008
836-054-0060	1-16-2008	Repeal	3-1-2008	839-002-0065	1-1-2008	Adopt	2-1-2008
836-054-0065	1-16-2008	Repeal	3-1-2008	839-002-0070	1-1-2008	Adopt	2-1-2008
836-071-0130	12-11-2007	Amend(T)	1-1-2008	839-002-0080	1-1-2008	Adopt	2-1-2008
836-071-0135	12-11-2007	Amend(T)	1-1-2008	839-003-0005	1-1-2008	Amend	2-1-2008
836-071-0145	12-11-2007	Amend(T)	1-1-2008	839-003-0005	3-25-2008	Amend(T)	5-1-2008
836-200-0105	4-7-2008	Adopt	5-1-2008	839-003-0010	3-25-2008	Amend(T)	5-1-2008
836-200-0110	4-7-2008	Adopt	5-1-2008	839-003-0020	1-1-2008	Amend	2-1-2008
836-200-0120	4-7-2008	Adopt	5-1-2008	839-003-0020	3-25-2008	Amend(T)	5-1-2008
836-200-0130	4-7-2008	Adopt	5-1-2008	839-003-0025	3-25-2008	Amend(T)	5-1-2008
836-200-0140	4-7-2008	Adopt	5-1-2008	839-003-0040	3-25-2008	Amend(T)	5-1-2008
836-200-0200	4-14-2008	Adopt	5-1-2008	839-003-0045	3-25-2008	Amend(T)	5-1-2008
836-200-0210	4-14-2008	Adopt	5-1-2008	839-003-0050	3-25-2008	Amend(T)	5-1-2008
836-200-0215	4-14-2008	Adopt	5-1-2008	839-003-0055	1-1-2008	Amend	2-1-2008
836-200-0220	4-14-2008	Adopt	5-1-2008	839-003-0055	3-25-2008	Amend(T)	5-1-2008
837-012-0520	1-25-2008	Amend(T)	3-1-2008	839-003-0060	1-1-2008	Amend	2-1-2008
837-012-0520	5-1-2008	Amend	5-1-2008	839-003-0060	3-25-2008	Amend(T)	5-1-2008
837-020-0035	11-30-2007	Amend(T)	1-1-2008	839-003-0065	3-25-2008	Amend(T)	5-1-2008

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839-003-0080	1-1-2008	Amend	2-1-2008	839-006-0405	1-1-2008	Repeal	2-1-2008
839-003-0080	3-25-2008	Amend(T)	5-1-2008	839-006-0410	1-1-2008	Repeal	2-1-2008
839-003-0085	3-25-2008	Amend(T)	5-1-2008	839-006-0415	1-1-2008	Repeal	2-1-2008
839-003-0090	1-1-2008	Amend	2-1-2008	839-006-0425	1-1-2008	Repeal	2-1-2008
839-003-0090	3-25-2008	Amend(T)	5-1-2008	839-007-0075	1-1-2008	Adopt	2-1-2008
839-003-0095	3-25-2008	Amend(T)	5-1-2008	839-009-0210	1-1-2008	Amend	2-1-2008
839-003-0100	3-25-2008	Amend(T)	5-1-2008	839-009-0240	1-1-2008	Amend	2-1-2008
839-003-0200	1-1-2008	Adopt	2-1-2008	839-009-0250	1-1-2008	Amend	2-1-2008
839-003-0200	3-25-2008	Amend(T)	5-1-2008	839-009-0260	1-1-2008	Amend	2-1-2008
839-003-0205	1-1-2008	Adopt	2-1-2008	839-009-0280	1-1-2008	Amend	2-1-2008
839-003-0205	3-25-2008	Amend(T)	5-1-2008	839-009-0320	1-1-2008	Amend	2-1-2008
839-003-0210	1-1-2008	Adopt	2-1-2008	839-009-0325	1-1-2008	Adopt	2-1-2008
839-003-0210	3-25-2008	Amend(T)	5-1-2008	839-009-0330	1-1-2008	Adopt	2-1-2008
839-003-0215	1-1-2008	Adopt	2-1-2008	839-009-0335	1-1-2008	Adopt	2-1-2008
839-003-0215	3-25-2008	Amend(T)	5-1-2008	839-009-0340	1-1-2008	Adopt	2-1-2008
839-003-0220	1-1-2008	Adopt	2-1-2008	839-009-0345	1-1-2008	Adopt	2-1-2008
839-003-0220	3-25-2008	Amend(T)	5-1-2008	839-009-0350	1-1-2008	Adopt	2-1-2008
839-003-0225	1-1-2008	Adopt	2-1-2008	839-009-0355	1-1-2008	Adopt	2-1-2008
839-003-0225	3-25-2008	Amend(T)	5-1-2008	839-009-0360	1-1-2008	Adopt	2-1-2008
839-003-0230	1-1-2008	Adopt	2-1-2008	839-009-0362	1-1-2008	Adopt	2-1-2008
839-003-0230	3-25-2008	Amend(T)	5-1-2008	839-009-0363	1-1-2008	Adopt	2-1-2008
839-003-0235	1-1-2008	Adopt	2-1-2008	839-009-0365	1-1-2008	Adopt	2-1-2008
839-003-0235	3-25-2008	Amend(T)	5-1-2008	839-010-0000	1-1-2008	Amend	2-1-2008
839-003-0240	1-1-2008	Adopt	2-1-2008	839-010-0010	1-1-2008	Amend	2-1-2008
839-003-0240	3-25-2008	Amend(T)	5-1-2008	839-010-0020	1-1-2008	Amend	2-1-2008
839-003-0240	3-25-2008	Amend(T)	5-1-2008	839-010-0040	1-1-2008	Amend	2-1-2008
839-003-0245	1-1-2008	Adopt	2-1-2008	839-010-0100	1-1-2008	Amend	2-1-2008
839-005-0000	1-1-2008	Amend	2-1-2008	839-010-0110	1-1-2008	Repeal	2-1-2008
839-005-0000	3-25-2008	Amend(T)	5-1-2008	839-015-0140	1-1-2008	Amend	2-1-2008
839-005-0003	1-1-2008	Amend	2-1-2008	839-015-0508	1-1-2008	Amend	2-1-2008
839-005-0003	3-25-2008	Amend(T)	5-1-2008	839-015-0509	1-1-2008	Adopt	2-1-2008
839-005-0010	1-1-2008	Amend	2-1-2008	839-015-0605	3-10-2008	Amend	4-1-2008
839-005-0010	3-25-2008	Amend(T)	5-1-2008	839-020-0012	1-1-2008	Amend	2-1-2008
839-005-0016	1-1-2008	Adopt	2-1-2008	839-020-0015	1-1-2008	Amend	2-1-2008
839-005-0016	3-25-2008	Amend(T)	5-1-2008	839-020-0050	1-1-2008	Amend	2-1-2008
839-005-0021	1-1-2008	Amend	2-1-2008	839-020-0051	1-1-2008	Adopt	2-1-2008
839-005-0026	1-1-2008	Amend	2-1-2008	839-020-0080	1-1-2008	Amend	2-1-2008
839-005-0026	3-25-2008	Amend(T)	5-1-2008	839-020-0260	1-1-2008	Amend	2-1-2008
839-005-0030	1-1-2008	Amend	2-1-2008	839-020-1010	1-1-2008	Amend	2-1-2008
839-005-0195	1-1-2008	Adopt	2-1-2008	839-025-0004	1-1-2008	Amend	2-1-2008
839-005-0195	3-25-2008	Amend(T)	5-1-2008	839-025-0005	1-1-2008	Adopt	2-1-2008
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839-005-0200	3-25-2008	Amend(T)	5-1-2008	839-025-0008	1-1-2008	Amend	2-1-2008
839-005-0205	1-1-2008	Adopt	2-1-2008	839-025-0008	3-10-2008	Amend	4-1-2008
839-005-0205	3-25-2008	Amend(T)	5-1-2008	839-025-0010	1-1-2008	Amend	2-1-2008
839-005-0210	1-1-2008	Adopt	2-1-2008	839-025-0013	1-1-2008	Amend	2-1-2008
839-005-0215	1-1-2008	Adopt	2-1-2008	839-025-0015	3-10-2008	Amend	4-1-2008
839-005-0220	1-1-2008	Adopt	2-1-2008	839-025-0020	1-1-2008	Amend	2-1-2008
839-005-0220	3-25-2008	Amend(T)	5-1-2008	839-025-0025	1-1-2008	Amend	2-1-2008
839-006-0105	1-1-2008	Amend	2-1-2008	839-025-0035	1-1-2008	Amend	2-1-2008
839-006-0130	1-1-2008	Amend	2-1-2008	839-025-0037	1-1-2008	Amend	2-1-2008
839-006-0131	1-1-2008	Amend	2-1-2008	839-025-0080	1-1-2008	Amend	2-1-2008
839-006-0135	1-1-2008	Amend	2-1-2008	839-025-0085	1-1-2008	Amend	2-1-2008
839-006-0136	1-1-2008	Amend	2-1-2008	839-025-0090	1-1-2008	Amend	2-1-2008
839-006-0150	1-1-2008	Amend	2-1-2008	839-025-0095	1-1-2008	Amend	2-1-2008

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839-025-0150	1-1-2008	Amend	2-1-2008	847-023-0005	1-22-2008	Amend	3-1-2008
839-025-0200	1-1-2008	Amend	2-1-2008	847-050-0020	1-22-2008	Amend	3-1-2008
839-025-0210	1-1-2008	Amend	2-1-2008	848-035-0020	2-19-2008	Amend(T)	4-1-2008
839-025-0220	1-1-2008	Amend	2-1-2008	850-060-0225	2-19-2008	Amend	4-1-2008
839-025-0230	1-1-2008	Amend	2-1-2008	850-060-0225	3-21-2008	Amend	5-1-2008
839-025-0310	1-1-2008	Amend	2-1-2008	850-060-0226	2-19-2008	Amend	4-1-2008
839-025-0315	1-1-2008	Adopt	2-1-2008	850-060-0226	3-21-2008	Amend	5-1-2008
839-025-0340	1-1-2008	Amend	2-1-2008	851-045-0015	11-21-2007	Amend	1-1-2008
839-025-0500	1-1-2008	Amend	2-1-2008	851-056-0012	11-21-2007	Amend	1-1-2008
839-025-0520	1-1-2008	Amend	2-1-2008	851-056-0012	2-25-2008	Amend	4-1-2008
839-025-0530	1-1-2008	Amend	2-1-2008	851-061-0020	2-25-2008	Amend	4-1-2008
839-025-0540	1-1-2008	Amend	2-1-2008	851-061-0030	2-25-2008	Amend	4-1-2008
839-025-0700	11-23-2007	Amend	1-1-2008	851-061-0080	2-25-2008	Amend	4-1-2008
839-025-0700	1-1-2008	Amend	2-1-2008	851-061-0090	2-25-2008	Amend	4-1-2008
839-025-0700	1-4-2008	Amend	2-1-2008	851-061-0120	2-25-2008	Amend	4-1-2008
839-025-0700	1-11-2008	Amend	2-1-2008	852-001-0001	12-7-2007	Amend	1-1-2008
839-025-0700	2-21-2008	Amend	4-1-2008	852-001-0002	12-7-2007	Amend	1-1-2008
839-025-0700	3-13-2008	Amend	4-1-2008	852-050-0006	12-7-2007	Amend	1-1-2008
839-025-0700	4-1-2008	Amend	5-1-2008	852-080-0030	1-1-2008	Amend	1-1-2008
839-025-0700	4-14-2008	Amend	5-1-2008	855-006-0005	2-20-2008	Amend	4-1-2008
845-001-0007	4-1-2008	Amend	5-1-2008	855-006-0015	2-5-2008	Adopt	3-1-2008
845-003-0670	2-1-2008	Amend	3-1-2008	855-010-0045	2-20-2008	Adopt	4-1-2008
845-005-0416	1-1-2008	Adopt(T)	1-1-2008	855-019-0005	2-20-2008	Am. & Ren.	4-1-2008
845-005-0417	1-1-2008	Adopt(T)	1-1-2008	855-019-0007	2-20-2008	Repeal	4-1-2008
845-005-0420	1-1-2008	Amend(T)	1-1-2008	855-019-0010	2-20-2008	Am. & Ren.	4-1-2008
845-005-0422	1-1-2008	Suspend	1-1-2008	855-019-0015	2-20-2008	Am. & Ren.	4-1-2008
845-005-0423	1-1-2008	Suspend	1-1-2008	855-019-0020	2-20-2008	Repeal	4-1-2008
845-005-0424	1-1-2008	Amend(T)	1-1-2008	855-019-0025	2-20-2008	Am. & Ren.	4-1-2008
845-005-0425	1-1-2008	Adopt(T)	1-1-2008	855-019-0030	2-20-2008	Am. & Ren.	4-1-2008
845-005-0426	1-1-2008	Adopt(T)	1-1-2008	855-019-0035	2-20-2008	Repeal	4-1-2008
845-005-0430	2-18-2008	Adopt(T)	3-1-2008	855-019-0040	2-20-2008	Am. & Ren.	4-1-2008
845-005-0430(T)	3-17-2008	Suspend	5-1-2008	855-019-0050	2-20-2008	Am. & Ren.	4-1-2008
845-005-0440	1-1-2008	Amend	2-1-2008	855-019-0055	2-20-2008	Am. & Ren.	4-1-2008
845-006-0340	1-1-2008	Amend	2-1-2008	855-019-0100	2-20-2008	Adopt	4-1-2008
845-006-0391	1-1-2008	Adopt(T)	1-1-2008	855-019-0110	2-20-2008	Adopt	4-1-2008
845-006-0392	1-1-2008	Adopt(T)	1-1-2008	855-019-0150	2-20-2008	Adopt	4-1-2008
845-006-0395	1-1-2008	Suspend	1-1-2008	855-019-0220	2-20-2008	Adopt	4-1-2008
845-006-0396	1-1-2008	Amend(T)	1-1-2008	855-019-0240	2-20-2008	Adopt	4-1-2008
845-006-0398	1-1-2008	Suspend	1-1-2008	855-019-0250	2-20-2008	Adopt	4-1-2008
845-006-0400	1-1-2008	Adopt(T)	1-1-2008	855-019-0300	2-20-2008	Adopt	4-1-2008
845-006-0401	1-1-2008	Adopt(T)	1-1-2008	855-035-0005	2-20-2008	Amend	4-1-2008
845-006-0451	2-18-2008	Adopt(T)	3-1-2008	855-035-0020	2-20-2008	Amend	4-1-2008
845-006-0451(T)	3-17-2008	Suspend	5-1-2008	855-041-0020	2-20-2008	Amend	4-1-2008
845-007-0015	1-1-2008	Amend	2-1-2008	855-041-0050	2-20-2008	Am. & Ren.	4-1-2008
845-015-0141	1-1-2008	Adopt(T)	1-1-2008	855-041-0060	2-20-2008	Amend	4-1-2008
845-015-0165	1-1-2008	Amend	2-1-2008	855-041-0061	2-5-2008	Adopt	3-1-2008
845-020-0035	3-16-2008	Amend	3-1-2008	855-041-0063	2-20-2008	Am. & Ren.	4-1-2008
847-005-0005	1-22-2008	Amend	3-1-2008	855-041-0085	2-20-2008	Am. & Ren.	4-1-2008
847-008-0037	1-22-2008	Amend	3-1-2008	855-041-0086	2-20-2008	Amend	4-1-2008
847-008-0055	1-22-2008	Amend	3-1-2008	855-041-0100	2-20-2008	Am. & Ren.	4-1-2008
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847-010-0064	1-22-2008	Amend	3-1-2008	855-041-0300	2-20-2008	Amend	4-1-2008
847-010-0070	1-22-2008	Amend	3-1-2008	855-041-0400	2-20-2008	Am. & Ren.	4-1-2008
847-010-0073	1-22-2008	Amend	3-1-2008	855-041-0500	2-20-2008	Am. & Ren.	4-1-2008
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855-045-0200	2-20-2008	Adopt	4-1-2008	860-038-0005	12-31-2007	Amend	2-1-2008
855-045-0210	2-20-2008	Adopt	4-1-2008	860-038-0480	12-31-2007	Amend	2-1-2008
855-045-0220	2-20-2008	Adopt	4-1-2008	863-015-0125	1-18-2008	Amend(T)	3-1-2008
855-045-0230	2-20-2008	Adopt	4-1-2008	875-005-0005	2-11-2008	Amend	3-1-2008
855-045-0250	2-20-2008	Adopt	4-1-2008	875-010-0026	2-11-2008	Amend	3-1-2008
855-045-0260	2-20-2008	Adopt	4-1-2008	875-010-0050	2-11-2008	Amend	3-1-2008
855-045-0270	2-20-2008	Adopt	4-1-2008	875-010-0090	2-11-2008	Amend	3-1-2008
855-055-0005	2-20-2008	Repeal	4-1-2008	875-010-0090	2-11-2008	Amend(T)	3-1-2008
855-055-0010	2-20-2008	Repeal	4-1-2008	875-011-0010	3-19-2008	Amend	5-1-2008
855-055-0015	2-20-2008	Repeal	4-1-2008	875-015-0030	2-11-2008	Amend	3-1-2008
855-055-0020	2-20-2008	Repeal	4-1-2008	875-020-0005	4-21-2008	Amend(T)	5-1-2008
856-001-0000	1-24-2008	Amend	3-1-2008	875-030-0030	2-11-2008	Amend	3-1-2008
856-001-0005	1-24-2008	Amend	3-1-2008	875-030-0040	2-11-2008	Amend	3-1-2008
856-010-0003	1-24-2008	Amend	3-1-2008	875-030-0050	2-11-2008	Amend	3-1-2008
856-010-0010	1-24-2008	Amend	3-1-2008	918-001-0010	3-18-2008	Amend	5-1-2008
856-010-0012	1-24-2008	Amend	3-1-2008	918-020-0094	1-1-2008	Adopt	2-1-2008
856-010-0014	1-24-2008	Amend	3-1-2008	918-020-0094(T)	1-1-2008	Repeal	2-1-2008
856-010-0015	1-24-2008	Amend	3-1-2008	918-030-0045	1-3-2008	Adopt(T)	2-1-2008
856-010-0016	1-24-2008	Amend	3-1-2008	918-030-0200	1-1-2008	Amend	2-1-2008
856-010-0018	1-24-2008	Amend	3-1-2008	918-030-0220	1-1-2008	Amend	2-1-2008
856-010-0020	1-24-2008	Amend	3-1-2008	918-030-0230	1-1-2008	Amend	2-1-2008
858-010-0001	3-26-2008	Amend	5-1-2008	918-098-1012	1-1-2008	Amend	2-1-2008
858-010-0005	3-26-2008	Amend	5-1-2008	918-098-1015	1-1-2008	Amend	2-1-2008
858-010-0007	3-26-2008	Amend	5-1-2008	918-225-0240	1-1-2008	Amend	2-1-2008
858-010-0010	3-26-2008	Amend	5-1-2008	918-225-0345	1-1-2008	Adopt	2-1-2008
858-010-0015	3-26-2008	Amend	5-1-2008	918-225-0600	1-1-2008	Amend	2-1-2008
858-010-0020	3-26-2008	Amend	5-1-2008	918-225-0610	1-1-2008	Amend	2-1-2008
858-010-0025	3-26-2008	Amend	5-1-2008	918-225-0640	1-1-2008	Amend	2-1-2008
858-010-0030	3-26-2008	Amend	5-1-2008	918-282-0130	1-1-2008	Amend	2-1-2008
858-010-0036	3-26-2008	Amend	5-1-2008	918-282-0210	1-1-2008	Repeal	2-1-2008
858-010-0041	3-26-2008	Amend	5-1-2008	918-282-0220	1-1-2008	Amend	2-1-2008
858-010-0050	3-26-2008	Amend	5-1-2008	918-282-0240	1-1-2008	Amend	2-1-2008
858-010-0055	3-26-2008	Amend	5-1-2008	918-282-0270	4-1-2008	Amend	4-1-2008
858-010-0075	3-26-2008	Amend	5-1-2008	918-282-0300	1-1-2008	Repeal	2-1-2008
858-020-0015	3-26-2008	Amend	5-1-2008	918-282-0310	1-1-2008	Repeal	2-1-2008
858-020-0045	3-26-2008	Amend	5-1-2008	918-282-0355	1-1-2008	Amend	2-1-2008
858-020-0075	3-26-2008	Amend	5-1-2008	918-305-0005	4-1-2008	Amend	4-1-2008
858-030-0005	3-26-2008	Amend	5-1-2008	918-305-0030	4-1-2008	Amend	4-1-2008
858-040-0015	3-26-2008	Amend	5-1-2008	918-305-0100	4-1-2008	Amend	4-1-2008
858-040-0025	3-26-2008	Amend	5-1-2008	918-305-0105	4-1-2008	Amend	4-1-2008
858-040-0035	3-26-2008	Amend	5-1-2008	918-305-0110	4-1-2008	Amend	4-1-2008
858-040-0036	3-26-2008	Amend	5-1-2008	918-305-0120	4-1-2008	Amend	4-1-2008
858-040-0055	3-26-2008	Amend	5-1-2008	918-305-0130	4-1-2008	Amend	4-1-2008
858-040-0065	3-26-2008	Amend	5-1-2008	918-305-0150	4-1-2008	Amend	4-1-2008
858-040-0075	3-26-2008	Amend	5-1-2008	918-305-0160	4-1-2008	Amend	4-1-2008
858-040-0085	3-26-2008	Amend	5-1-2008	918-305-0165	4-1-2008	Amend	4-1-2008
858-040-0095	3-26-2008	Amend	5-1-2008	918-305-0180	4-1-2008	Amend	4-1-2008
858-050-0100	3-26-2008	Amend	5-1-2008	918-305-0190	4-1-2008	Amend	4-1-2008
858-050-0105	3-26-2008	Amend	5-1-2008	918-305-0205	4-1-2008	Amend	4-1-2008
858-050-0110	3-26-2008	Amend	5-1-2008	918-305-0210	4-1-2008	Amend	4-1-2008
858-050-0120	3-26-2008	Amend	5-1-2008	918-305-0250	4-1-2008	Amend	4-1-2008
858-050-0125	3-26-2008	Amend	5-1-2008	918-305-0270	4-1-2008	Amend	4-1-2008
858-050-0140	3-26-2008	Amend	5-1-2008	918-305-0280	4-1-2008	Amend	4-1-2008
858-050-0145	3-26-2008	Amend	5-1-2008	918-305-0290	4-1-2008	Amend	4-1-2008

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918-305-0310	4-1-2008	Amend	4-1-2008	918-480-0010	4-1-2008	Amend	4-1-2008
918-305-0320	4-1-2008	Amend	4-1-2008	918-480-0140	4-1-2008	Adopt	4-1-2008
918-400-0280	1-1-2008	Amend	2-1-2008	918-750-0110	4-1-2008	Amend	4-1-2008
918-400-0333	1-1-2008	Amend	2-1-2008	918-780-0030	1-1-2008	Amend	2-1-2008
918-400-0340	1-1-2008	Amend	2-1-2008	972-040-0000	1-23-2008	Adopt	3-1-2008
918-400-0380	1-1-2008	Amend	2-1-2008	972-040-0010	1-23-2008	Adopt	3-1-2008
918-400-0800	1-1-2008	Amend	2-1-2008	972-040-0020	1-23-2008	Adopt	3-1-2008