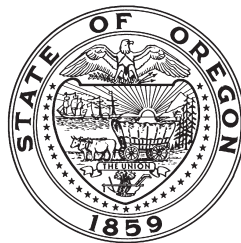


OREGON BULLETIN

Supplements the 2008 *Oregon Administrative Rules Compilation*

Volume 47, No. 4
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For February 19, 2008–March 14, 2008



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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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OTHER NOTICES

DEPARTMENT OF ENVIRONMENTAL QUALITY REQUEST FOR COMMENTS PROPOSED SETTLEMENTS REGARDING COLUMBIA SLOUGH PORTLAND, MULTNOMAH COUNTY

COMMENTS DUE: May 1, 2008

PROJECT LOCATION: The Columbia Slough is located in Portland parallel to the Columbia River and extends approximately 31 waterway miles, including side sloughs, from Fairview Lake on the east side to the Willamette River on the west side. The segment of the Columbia Slough addressed by the proposed settlements begins at Martin Luther King Blvd. to the east and ends downstream at the western property boundary of the former Pacific Meat Company property at 2701 N. Newark St. The locations of specific properties subject to the proposed settlements are described below.

PROPOSAL: DEQ is proposing to enter settlements with potentially liable parties for implementation of cleanup and source control at upland properties and sediments remediation in the Columbia Slough. The settlements would be in the form of a consent judgment pursuant to ORS 465.325(4), except for the settlement with ODOT which would be in the form of an administrative consent order pursuant to ORS 465.325(8). The settlements would require the potentially liable parties to satisfactorily complete cleanup and source control measures at their upland facilities, pay DEQ specified amounts to be used by DEQ for sediments work. Those parties wishing to settle potential natural damage claims would also pay DEQ a specified amount to be dedicated to habitat restoration at Ramsey Lake. In return, the settling parties would receive a covenant not to sue from the State and contribution protection as to third parties regarding the matters addressed by the settlements.

DEQ proposes to enter the settlements for the following parties and properties:

Facility/Parties — Facility Location

Arclin Surfaces Inc./Simpson Timber Co. — 2301 N. Columbia Blvd

Blasen Family LLC — 1602 N. Columbia Blvd.

Macadam Aluminum & Bronze Co. — 1255 N. Columbia Blvd.

Oregon Dept. of Transportation — I-5 Stormwater Outfall & maintenance yard at 1100 N. Columbia Blvd

Pacific Meat Co/ Tindall Family Properties, LLC. — 2701 N. Newark St.

Precision Equipment/ Dick F. & Joan L. Morgan — 8440 N. Kerby Ave.

Wastech — 701 N. Hunt St.

On February 1, 2008 running through March 3, 2008, DEQ provided public notice and opportunity to comment on proposed settlements for the above parties except for Tindall Family Properties LLC at the Pacific Meat facility, and Dick F. Morgan and Joan L. Morgan at the Precision Equipment facility. This comment opportunity applies to the proposed settlements with Tindall Family Properties LLC, Dick F. Morgan, and Joan L. Morgan.

HIGHLIGHTS: Environmental investigations have identified sediment contamination throughout the Columbia Slough at levels exceeding risk-based concentrations for protection of aquatic receptors and human health. Contaminants of concern include metals, PAHs, PCBs, and chlorinated pesticides. Sources of this contamination include past and current storm water discharges through uncontrolled erosion runoff of soil directly to the Slough or through municipal or private storm water sewer lines. In 2005, DEQ issued a Record of Decision for the Slough that describes the framework for addressing the sediment contamination. The selected remedy involves storm water management to prevent ongoing releases, selective removal of sediment hot spots associated with individual or multiple sources, and natural recovery of remaining sediment contamination over time. DEQ has targeted the segment of the Slough between Martin Luther King Blvd. and the Pacific Meat property for first implementation of the remedy.

HOW TO COMMENT: The proposed settlements are available at DEQ's Northwest Region Office, 2020 SW 4th Ave., 4th floor or

from DEQ's web site: <http://www.deq.state.or.us/nwr/cs.htm>. To review files at DEQ's office, please contact DEQ's file review coordinator at (503) 229-6729 to make an appointment. Comments may be submitted to Mavis Kent, DEQ Cleanup Project Manager, by email at kent.mavis@deq.state.or.us; by mail at DEQ, 2020 SW 4th Ave., Suite 400, Portland, OR 97204; or by fax at 503-229-6945.

THE NEXT STEP: DEQ will review and consider all comments received during the comment period. If DEQ then determines to enter the consent judgments, the consent judgments will be executed by the parties and filed with the Multnomah County Circuit Court. The court must approve the consent judgments for them to take effect. DEQ similarly would determine whether to enter the administrative consent order with ODOT after consideration of public comment.

PROPOSED APPROVAL OF CLEANUP AT HOYT STREET RAILYARD — PEARL BLOCK

COMMENTS DUE: April 30, 2008

PROJECT LOCATION: NW 9th & NW 10th Avenues, NW Kearney Walkway and NW Lovejoy Street, Portland, Oregon

PROPOSAL: Pursuant to ORS 465.320 the Department of Environmental Quality (DEQ) invites public comment on the proposed conditional no further action recommendation for the Hoyt Street Railyard – Pearl Block.

HIGHLIGHTS: In December 2000, DEQ issued a Remedial Action Record of Decision (ROD) for the Hoyt Street Railyard. Contaminants of concern at the site were petroleum hydrocarbons, polynuclear aromatic hydrocarbons and lead. Between 2000 and 2003, as part of construction activities, soils at the site were excavated down to twelve feet below grade. Approximately 3,732 tons were removed from the site and thermally treated at TPS Technologies in Portland, Oregon. Approximately 6,133 tons were removed and disposed of at the Hillsboro Landfill in Hillsboro, Oregon. DEQ's review of the work completed at the Pearl Block demonstrates compliance with the requirements established under the ROD for the Hoyt Street Railyard. The DEQ has determined that upon formal filing of restrictions of use under an Easement & Equitable Servitude (E&ES), and as long as engineering controls are maintained at the site, the site no longer presents a threat to human health or the environment. DEQ is proposing to issue a conditional no further action (NFA) for the site.

HOW TO COMMENT: The project file is available for public review. To schedule an appointment, contact Dawn Weinberger at 503-229-6729. The DEQ contact for this project is Mike Greenburg, 503-229-5153. Written comments should be sent to the DEQ contact at the Department of Environmental Quality, Northwest Region, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201 by April 30, 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/>

PROPOSED NO FURTHER ACTION DETERMINATION FORMER SUMMERS LANE ARCO, 3640 SUMMERS LANE, KLAMATH FALLS, OREGON

COMMENTS DUE: April 30, 2008

PROJECT LOCATION: 3640 Summers Lane, Klamath Falls, Klamath County

PROPOSAL: The Department of Environmental Quality (DEQ, Department) is proposing to issue a Conditional No Further Action (CNFA) determination following underground storage tank (UST) decommissioning and site investigation activities for the release of petroleum from an UST system at the former Summers Lane ARCO facility. This determination is based on approval of investigation and remedial measures conducted to date. Public notification is required by ORS 465.320.

OTHER NOTICES

HIGHLIGHTS: Petroleum contaminated soil and groundwater were discovered in 1990 when three USTs were decommissioned. Remedial action measures taken at the site include the application of oxygen release compound (ORC) into the subsurface. Groundwater monitoring has been conducted at the site through September, 2007. Contaminated groundwater migrated off-site, however the contaminant plume has been delineated and shown to have stabilized. Contamination remains off-site and on-site. Conditions of closure include prohibitions on the extraction and use of groundwater at the site and also the requirement that specific precautions must be taken to protect worker health and safety prior to subsurface work in the areas of residual contamination. The Department has therefore determined that, with the requisite conditions in-place, no further action is required at this site.

HOW TO COMMENT: Comments and questions, by phone, fax, 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

Comments must be received by April 30, 2008.

To obtain a copy of the file or to schedule an appointment to review the file, please contact Mr. Klemz.

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.

CHANCE TO COMMENT ON PROPOSED DETERMINATION OF NO FURTHER ACTION FOR ONE FORMER AREA OF CONCERN FOR SOIL CONTAMINATION AND SOUTH DRAIN SYSTEM COMPONENTS AT WAH CHANG IN MILLERSBURG, OREGON

Comments Invited Through May 1, 2008

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) is holding a 30-day public comment period to solicit questions, comments, or additional information on its determination that one former area of concern for soil contamination and portions of the South Drain System have little or no risk of releasing hazardous chemicals to the environment at the Wah Chang plant in Millersburg.

PROJECT LOCATION: Wah Chang is north of Albany in Millersburg, Oregon at 1600 Old Salem Road NE. The plant occupies 110 acres bounded by I-5 and the Willamette River, and an additional 65 acres one mile north of the 110 acres.

FACILITY OPERATIONS: Wah Chang manufactures zirconium and other specialty metals. Operations at the Millersburg plant began in 1956. Facilities were constructed at the site primarily to produce zirconium and hafnium metal products. Melting and fabrication operations were added in 1959. The metals refined at the plant are turned into a wide range of products ranging from tubes and plates to wire.

HIGHLIGHTS: From 1980 until closure in 2001, Wah Chang operated an industrial furnace under a Resource Conservation and Recovery Act (RCRA) Hazardous Waste Facility Permit application submitted to DEQ. This application allowed the facility to store and treat by incineration hazardous wastes resulting from on-site manufacturing operations. Between 1996 and October 2001, Wah Chang modified routine site operations and submitted proposals to demonstrate closure of the permit. In October 2001, it was determined that routine site operations were appropriately modified and the permit was closed.

Following closure of the furnace, Wah Chang was required to investigate and address all historic releases of hazardous waste and materials that may have occurred at the facility. This investigation and cleanup is called the RCRA Corrective Action process and is conducted with oversight by the Environmental Protection Agency (EPA) and DEQ. The process is a phased approach consisting of assessment, investigation, identification and evaluation of cleanup alternatives, and implementation of a selected alternative.

Under the direction of EPA and DEQ, the assessment phase of the process was conducted at Wah Chang by an EPA contractor and the results were documented in a final report in August 1997. Based upon

the findings of the assessment, a total of 387 "units" or locations were recommended for further evaluation and investigation to help determine if additional action is needed for these locations. A "unit" is a container, tank or particular location where a chemical release has or may have occurred.

As part of the 1997 assessment, each catch basin and sump on the property was identified as a unit, requiring additional investigation to determine if it was likely to have leaked. These catch basins and sumps make up 345 of the 387 units identified in the initial EPA assessment, and are part of the facility-wide drain system. Most of these catch basins and sumps do not convey hazardous materials, and most have not contributed to groundwater contamination at the site. Many of the original 345 catch basins and sumps were closed under a 2007 DEQ evaluation. Under the current proposed action, an additional 206 units will be closed.

DEQ previously closed 39 of the 42 non-drain units in February of 2005 on the basis of information submitted by Wah Chang, demonstrating that releases or suspected releases of contaminants at 39 locations met one of the following conditions:

- Are non-existent or posed no risk to human health or the environment;
- Currently permitted or regulated under another authority;
- Mitigated by implementation of cleanup remedies (site excavations and disposal actions, capping of contaminated areas to prevent exposure); and
- Impractical to completely investigate and/or mitigate, with current and future facility environmental programs in-place to mitigate exposure to people or environmental receptors by potential contaminants.

Based on additional DEQ review of historical waste management and investigatory data, DEQ proposes to close another non-drain unit.

In addition, DEQ proposes to close 206 of the drain related units. The basis for closure of these units is that they pose little or no risk of release of a hazardous material to the environment.

Based on the review of information for the non-drain unit and 206 drain units, DEQ has determined that they have little or no potential of releasing hazardous constituents to the environment. This determination does not preclude DEQ from modifying their decision should new or previously undisclosed information indicate that there is, or may be, a release from a location that poses a threat to human health or the environment.

DEQ has requested additional information on the remaining drain and non-drain units. The remaining drain units will be evaluated as part of a review to be conducted in 2008.

HOW TO COMMENT: Comments must be received by 5:00 PM on May 1, 2008. The investigative reports, and other project files are available for public review at DEQ's Eugene Office. To schedule an appointment to view the files, please call the Eugene Office at (541)686-7819, toll free at 1-800-844-8467, TTY at 541-687-5603. For questions or comments about the this determination, please call or send written comments by fax or email to: Geoff Brown, Project Manager, 541-686-7819 (toll free & TTY above), Fax: 541-686-7551, brown.geoff@deq.state.or.us. Comments may also be mailed to Geoff Brown at 1102 Lincoln, Suite 210, Eugene, OR 97401

THE NEXT STEP: DEQ will consider all public comments received by the May 1, 2008 deadline before making the determination final. The issuance of this determination does not affect the continuing Corrective Action work at the site. Additional 30-day public comment periods will be held in the future to address the remaining locations.

REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION DETERMINATION FOR LES SCHWAB MCMINNVILLE (FORMER) SITE

COMMENTS DUE: April 30, 2008

PROJECT LOCATION: 1515 NE Baker St., McMinnville, OR

OTHER NOTICES

PROPOSAL: DEQ is recommending no further cleanup action at the Les Schwab, McMinnville (former) Site. This notification is required by ORS 465.320.

HIGHLIGHTS: In the spring of 2000 Wark Environmental decommissioned five hydraulic tanks by removal from the East side of the structure and collected preliminary samples. Over 1000 tons of soil were removed from the tank area during the initial decommissioning. In 2002 EVREN Northwest investigated potential contamination of the area of former hydraulic lifts and several other parts of the property identified by historical research and geophysical methods. Petroleum contamination was not detected in any of these samples.

HOW TO COMMENT: Project files may be reviewed by appointment at DEQ's Eugene office, 1102 Lincoln Street. Written comments must be received by May 1, 2008. Comments should be submitted to Seth Sadofsky, located at 1102 Lincoln St., Suite 210, Eugene, OR 97401 or by e-mail at sadofsky.seth@deq.state.or.us. Questions may also be directed to Seth Sadofsky at the Eugene address or by calling him at 1-800-844-8467 ext 7329. DEQ will consider all public comments before taking final actions on this matter.

THE NEXT STEP: A formal ruling that No Further Action is required will be issued if there is no new information revealed during the comment period.

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.

REQUEST FOR COMMENTS PROPOSED FINAL CLEANUP FOR SELMET

COMMENTS DUE: 5 pm, April 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 April 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 Clinical Social Workers Chapter 877

Rule Caption: Raise two specific fees to provide income for 1.0 FTE Compliance Specialist 2 staffing increase.

Date:	Time:	Location:
5-13-08	1-2:30 p.m.	3218 Pringle Rd. SE, Suite 240 Salem, OR 97302

Hearing Officer: Mark F. Oldham, LCSW

Stat. Auth.: ORS 675.571(1), 675.595(12)(a)

Stats. Implemented: ORS 675.510-675.600

Proposed Amendments: 877-020-0020

Last Date for Comment: 5-13-08, 2:30 p.m.

Summary: These changes will: (1) increase the fee to apply to the Board for a License or Certificate from \$100 to \$150; (2) increase the annual renewal of License fee for Licensed Clinical Social Workers from \$90 to \$130; (3) establish the same fee for issue of initial and renewal of certificate; and (4) establish the same fee for issue of initial and renewal of license.

Rules Coordinator: Jon F. Langenwalter

Address: State Board of Clinical Social Workers, 3218 Pringle Rd. SE, Suite 240, Salem, OR 97302

Telephone: (503) 378-5735, ext. 34

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Construction Contractors Board Chapter 812

Rule Caption: Amended to adopt revised forms, meet new requirements, housekeeping, and revise appeal process.

Date:	Time:	Location:
4-22-08	11 a.m.	West Salem Roth's IGA, Santiam Rm. 1130 Wallace Rd. Salem, OR

Hearing Officer: Tom Skaar

Stat. Auth.: ORS 183.310, 293.445, 670.310, 701.235, 701.305 & 701.330

Stats. Implemented: ORS 25.270, 25.785, 25.990, 188.341, 183.413, 183.470, 183.460, 192.430, 293.445, 701.035, 701.056,

701.068, 701.073, 701.088, 701.122, 701.235, 701.250, 701.260, 701.305 & 701.330

Proposed Adoptions: 812-009-0435

Proposed Amendments: 812-001-0120, 812-001-0160, 812-001-0200, 812-003-0260, 812-009-0400, 812-009-0420, 812012-0130

Proposed Repeals: 812-001-0200(T), 812-012-0130(T)

Last Date for Comment: 4-22-08, 11 a.m.

Summary: OAR 812-001-0120 is amended to adopt the current version of Attorney General's Uniform and Model Rules of Procedure.

OAR 812-001-0160 is amended to delete the word "tape" before the word "recording" since tapes are no longer used for hearings.

OAR 812-001-0200 is amended to adopt the revised version of the forms: "Information Notice to Owner About Construction Lines" and "Consumer Protection Notice."

OAR 812-003-0260 is amended to require contractors to fill in the certification section for applicant's seeking an endorsement as a commercial general or commercial specialty contractor that their key employees have the requisite experience or education required in ORS 701.081 and 701.084.

OAR 812-009-0400 is amended to add "Dispute Resolution" to the title to avoid confusion and to revise the date written response to exceptions are due to the agency and to delete the word "tape" and replace it with the word "recording" since tapes are no longer used for hearings.

OAR 812-009-0420 is amended to delete the written arguments language since the exceptions are the respondent's written arguments and adds a notification requirement in the exceptions from the respondent that they intend to rely on oral testimony. The changes to the rule flesh out how the procedure will work in Enforcement cases, as is currently done for DRS cases.

OAR 812-009-0435 is adopted to establish procedures for rescheduling of cases on appeal before the Appeal Committee.

OAR 812-012-0130 is amended to delete 812-012-0130(2) because it places contractors in an unworkable position as it relates to the delivery of CCB "Consumer Protection Notice" and "Notice of Procedure" documents when contracting to perform small repair projects. In many cases, these oral agreements are made by telephone and the work is performed when owners are not present at the job sites. Small electrical, plumbing, and glazing repair projects, for example, are often ordered by consumers over the telephone. The only written document is the invoice prepared by the contractor at the conclusion of the work. This is often impossible as these deals are often made over the telephone.

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 Agriculture Chapter 603

Rule Caption: Require bulls entering Oregon be tested for *Trichomonas fetus*.

Date:	Time:	Location:
4-16-08	10 a.m. (MST)	1710 SW 5th St. Ontario, OR
4-18-08	1 p.m.	3328 Vandenberg Rd. Klamath Falls, OR

Hearing Officer: Staff

Stat. Auth.: ORS 596

Stats. Implemented:

Proposed Adoptions: 603-011-0615

Proposed Amendments: 603-011-0610, 603-011-0620

Last Date for Comment: 4-20-08

Summary: Our own trichomoniasis case studies have revealed that infected bulls being imported from other states remain a significant threat to Oregon herds for *Trichomonas fetus* infection. Experience also reveals that most bulls over 12 months of age are sexually mature and capable of contracting and then spreading *Trichomonas fetus* to

NOTICES OF PROPOSED RULEMAKING

susceptible female cattle. these rules amend the definition of virgin bull to be 12 months and over. They further require bulls 12 months of age and over be tested negative for *Trichomonas fetus* before they are imported into Oregon.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

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**Department of Agriculture,
Oregon Processed Vegetable Commission
Chapter 647**

Rule Caption: Amend rules related to assessment rates.

Date:	Time:	Location:
4-24-08	7:30 p.m.	3415 Commercial St. SE Salem, OR

Hearing Officer: Bruce Hammelman

Stat. Auth.: ORS 576.051–576.595

Stats. Implemented: ORS 576.051–576.595

Proposed Amendments: 647-010-0010

Last Date for Comment: 4-24-08, 7:30 p.m.

Summary: The proposed rule amendments set the assessment rate for the six processed vegetable crops governed by the commission.

Rules Coordinator: John McCulley

Address: Department of Agriculture, Processed Vegetable Commission, PO Box 2042, Salem, OR 97308

Telephone: (503) 370-7019

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**Department of Consumer and Business Services,
Insurance Division
Chapter 836**

Rule Caption: Relating to Licensing Examination Fees Generally and to Renewal of Adjuster and Insurance Consultant Licenses.

Stat. Auth.: ORS 731.244, 731.804, 744.007 & 744.037

Stats. Implemented: ORS 731.804, 744.001, 744.002, 744.004, 744.007, 744.009, 744.058, 744.062, 744.063, 744.064, 744.072, 744.531 & 744.535

Proposed Amendments: 836-009-0007, 836-071-0130, 836-071-0135, 836-071-0145

Last Date for Comment: 5-9-08

Summary: This rulemaking proposes to permanently adopt temporary rulemaking that reduces fees for license examinations and reexaminations for insurance producers, adjusters and insurance consultants, and also proposed to change the biennial renewal date for individual adjuster and insurance consultant licenses from the anniversary of the license issuance date to the anniversary of the month of the licensee's birth date. Corresponding changes to other rules are made as well.

Rules Coordinator: Sue Munson

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

Telephone: (503) 947-7272

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Rule Caption: Filing and Public disclosure of Health Benefit Plan Rates.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 743.018 & 743.730 – 743.773

Proposed Amendments: 836-053-0910

Last Date for Comment: 5-12-08

Summary: This rulemaking implements legislation enacted in 2007 that requires rate filings for certain health benefit plans to be available for public inspection once the filing is submitted to the Director. The requirement applies to health benefit plans for small employers and to portability and individual health benefit plans. The rulemaking provides for public inspection of the filing, states the manner and format for filing the rating information and exemptions

from the filing requirement and requires a carrier to include with a rate filing and explanatory statement about the filing.

Rules Coordinator: Sue Munson

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

Telephone: (503) 947-7272

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

Rule Caption: Propose changes to Personal Protective Equipment standard in General Industry, Construction, Agriculture and Maritime.

Date:	Time:	Location:
4-21-08	9:30 a.m.	Labor & Industries Bldg. 350 Winter St. NE Basement — Conference Rm. F Salem, OR 97301

Hearing Officer: Sue Joye

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

Stats. Implemented: ORS 654.001 – 654.295

Proposed Amendments: 437-002-0120, 437-003-0001, 437-004-1005, 437-005-0001, 437-005-0002, 437-005-0003

Last Date for Comment: 4-28-08

Summary: Oregon OSHA proposes to adopt the Federal OSHA changes as they appear in the November 15, 2007 Federal Register, into Division 2/I, Personal Protective Equipment, and Division 3/E, Personal Protective and Life Saving Equipment. The changes codify and clarify the employers' responsibility to provide and pay for protective equipment that is necessary for employees to perform their jobs safely.

In addition to the Federal OSHA changes, Oregon OSHA proposes to replace the existing language in Division 4/I, Protective Equipment, with language comparable to the new Federal OSHA language for clarity.

Please visit our website www.orosha.org. Click 'Rules/Compliance' in the left vertical column and view our proposed, adopted, and final rules.

Rules Coordinator: Sue C. Joye

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

Telephone: (503) 947-7449

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Rule Caption: Propose to remove several references to consensus standards that have put duplicative/comparable requirements.

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

Stats. Implemented: ORS 654.001–654.295

Proposed Amendments: 437-002-0005, 437-002-0060, 437-002-0080, 437-002-0100, 437-002-0140, 437-002-0260, 437-002-0280, 437-002-0300, 437-004-2230

Last Date for Comment: 4-28-08

Summary: This rule making is to keep Oregon in harmony with recent changes to Federal OSHA's standards. We are removing several references to consensus standards that have requirements that duplicate, or are comparable to, other OR-OSHA rules; this action includes correcting a paragraph citation in one of these rules. We are also removing a reference to American Welding Society standard A3.0-1969 ("Terms and Definitions") in our general industry welding standards. This rulemaking is part of a continuing effort to update references to consensus and industry standards used throughout our rules.

OR-OSHA proposes to adopt the changes in general industry as published in the December 14, 2007 Federal Register. A reference to American National Standard Safety Requirements for Explosive-Actuated Fastening Tools, ANSI A10.3-1995 will be removed in Division 4/P, Agriculture/Small Tools.

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Please visit our website www.orsosha.org. Click 'Rules & Laws' in the left vertical column and view our proposed, adopted, and final rules.

Rules Coordinator: Sue C. Joye

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

Telephone: (503) 947-7449

Department of Corrections

Chapter 291

Rule Caption: Purchasing.

Stat. Auth.: ORS 179.040, 279.050(6)(h)&(i), 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 279.050(6)(h)&(i), 423.020, 423.030 & 423.075

Proposed Adoptions: 291-164-0050

Proposed Amendments: 291-164-0005, 291-164-0010, 291-164-0015, 291-164-0020, 291-164-0025, 291-164-0030

Proposed Repeals: 291-164-0045

Last Date for Comment: 5-5-08

Summary: These rule modification are necessary to update Department policy and processes for purchasing of supplies and services and ensure they align with rules and policies of the Department of Administrative Services and Department of Justice. Other modifications are necessary to reflect organizational and operational changes that have occurred within the Department since the last revision.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Rule Caption: Contracts and Governmental Agreements with the Department of Corrections.

Stat. Auth.: ORS 179.040, 279.050(6)(h)&(i), 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 279.050(6)(h)&(i), 423.020, 423.030 & 423.075

Proposed Adoptions: 291-026-0050, 291-026-0140

Proposed Amendments: 291-026-0005 – 291-026-0025, 291-026-0105 – 291-026-0125

Proposed Repeals: 291-026-0030, 291-026-0085, 291-026-095, 291-026-0135

Last Date for Comment: 5-5-08

Summary: These modification are necessary to align the Department's rules with rules and policies of the Department of Administrative Services and the Department of Justice, and to reflect organizational and operational changes that have occurred within the Department since the last revision.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Department of Environmental Quality

Chapter 340

Rule Caption: Revisions to Oregon's environmental enforcement rules regarding the use of expedited enforcement.

Date:	Time:	Location:
4-17-08	5:30 p.m.	DEQ Bend Office 300 SE Reed Market Rd. Bend, OR
4-24-08	4-6 p.m.	DEQ Medford Office 221 Stewart Ave., Suite 201 Medford, OR
5-7-08	5:30 p.m.	DEQ Headquarters 811 SW 6th Ave. Portland, OR

Hearing Officer: Courtney Brown, DEQ

Stat. Auth.: ORS 468.020 & 468.130

Stats. Implemented: ORS 183.415, 183.470, 183.745, 459.376, 459.995, 465.900, 466.990, 466.994, 468.035, 468.090 & 468B.220

Proposed Amendments: 340-012-0030, 340-012-0038, 340-012-0155, 340-012-0170, 340-200-0040

Last Date for Comment: 5-15-08, 5 p.m.

Summary: This rulemaking proposal adds OAR 340-012-0170(2), which describes the process by and conditions under which the Department may make "expedited enforcement offers" to settle violations of environmental law as an alternative to the Department's formal enforcement action process already outlined in OAR, Division 12. Violators may accept the "expedited enforcement offer" by paying a reduced penalty and waiving the right to a hearing and judicial review of the Department's enforcement action.

This rulemaking proposal also defines "expedited enforcement offer" in OAR 340-012-0030 and describes what an "expedited settlement offer" is and how it is used in OAR 340-012-0038.

The rulemaking also makes two housekeeping changes regarding underground storage tank enforcement provisions that sunsetted on December 31, 2005.

Finally, the rulemaking proposal amends the State of Oregon Clean Air Act Implementation Plan (SIP) and therefore will amend the date the SIP was last modified.

To submit comments or request additional information, please contact Courtney Brown at the Department of Environmental Quality (DEQ), 811 SW 6th Ave., Portland, OR, 97204, toll free in Oregon at 800-452-4011 or 503-229-6839, or at brown.courtney@deq.state.or.us, or by fax 503-229-5100, 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

Rule Caption: Greenhouse Gas Mandatory Reporting Rules.

Date:	Time:	Location:
4-24-08	2:45 p.m.	DEQ, 811 SW Sixth Ave Portland, OR
5-1-08	6:30 p.m.	700 SE Emmigrant St. Pendleton, OR
5-5-08	6:30 p.m.	Deschutes Co. Library 601 NW Wall St. Bend, OR
5-6-08	6:30 p.m.	Klamath Co. Govt. Center 305 Maint St. Klamath Falls, OR
5-7-08	6:30 p.m.	Community Justice Center 1101 W Main St. Medford, OR
5-8-08	6:30 p.m.	EWEB* 500 E 4th Ave. Eugene, OR
5-9-08	10 a.m.	Corvallis-Benton Co. Library 645 NW Monroe Ave. Corvallis, OR
5-15-08	6:30 p.m.	DEQ, 811 SW Sixth Ave. Portland, OR

Hearing Officer: Environmental Quality Commission, DEQ Staff

Stat. Auth.: ORS 468A.050

Stats. Implemented: ORS 468 & 468A

Proposed Adoptions: 340-215-0010, 340-215-0020, 340-215-0030, 340-215-0040

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

Summary: The Oregon Department of Environmental Quality (DEQ) is proposing rules that would require sources to report greenhouse gas emissions to DEQ. The proposed rules require all sources in Oregon that are required to obtain permits under the Title V Operating Permit Program, and certain sources that are required to obtain permits under the Air Containment Discharge Permit Program, to

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report their emissions beginning with the 2009 reporting year. The proposed rules also require certain solid waste disposal facilities, wastewater treatment facilities, electric generating units and electricity transmission and distribution systems, that emit 2500 metric tons or more of greenhouse gas per year, to report their emissions beginning with the 2010 reporting year.

To submit comments or request additional information, please contact Marianne Fitzgerald at the department of Environmental Quality (DEQ), 811 SW Sixth Avenue, Portland, OR 97204, toll free in Oregon at 800-452-4011 or (503) 229-5946, or at fitzgerald.marianne@deq.state.or.us, or by fax at (503) 229-5675, or visit DEQ's website <http://www.deq.state.or.us/news/publicnotices/PN.asp>

*Regarding the May 8 hearing, EWEB furnishes public meeting rooms as a community service and does not sponsor or endorse activities or groups using EWEB's public facilities.

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

Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
4-22-08	9 a.m.	Rm. 254, 500 Summer St. NE Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 147.425, 409.185, 418.005, 418.015, 418.747, 418.800 & 419B.005 – 419B.050

Proposed Adoptions: 413-015-0520, 413-015-0525, 413-015-0530, 413-015-0535, 413-015-0540, 413-015-0545, 413-015-0550, 413-015-0555, 413-015-0560, 413-015-0565

Proposed Amendments: 413-015-0210, 413-015-0211, 413-015-0212, 413-015-0215, 413-015-0220, 413-015-0405, 413-015-0409, 413-015-1000

Last Date for Comment: 4-24-08, 5 p.m.

Summary: The Department is amending OAR 413-015-0200 through 413-015-0225 (Child Welfare Policy I-AB.2) about screening; OAR 413-015-0400 through 413-015-0485 (Child Welfare Policy I-AB. 4) about Child Protective Services (CPS) Assessment; and OAR 413-015-1000 (Child Welfare Policy I-AB.5) about the CPS Assessment Disposition and adopting OAR 413-015-0500 through 413-015-0565 (Child Welfare Policy I-AB.4.1) about Day Care Facility Investigations to implement the provisions of HB 3113, 2007 Or. Laws ch. 674, and to make permanent temporary rules that were filed on January 1, 2008.

OAR 413-015-0210 about the Department response and timelines after screening activities are complete is being amended to implement the provisions of HB 3113, 2007 Or. Laws ch. 674, and to make permanent temporary rules that were filed on January 1, 2008, by adding types of agencies for which a report requires a child protective services assessment and clarify language about required information to be gathered by screener, the criteria for a closed at screening decision, and the response time.

OAR 413-015-0211 about additional screening activities, OAR 413-015-0215 about notification to specific agencies or entities, and OAR 413-015-0220 about screening extensions are being amended to implement the provisions of HB 3113, 2007 Or. Laws ch. 674, and to make permanent temporary rules that were filed on January 1, 2008 by restating the Department's policy regarding screening activities, notifications in the screening process and screening extensions.

OAR 413-015-0212 about the required consultation between a screener and a CPS supervisor is being amended to implement the provisions of HB 3113, 2007 Or. Laws ch. 674, and to make per-

manent temporary rules that were filed on January 1, 2008 by including day care facility investigation, additional GAP screenings on other children, and use of "unable to locate" disposition as reasons to consult with a CPS supervisor.

OAR 413-015-0215 about the required notification during a CPS screening is being amended to implement the provisions of HB 3113, 2007 Or. Laws ch. 674, and to make permanent temporary rules that were filed on January 1, 2008 by restating the Department's policy regarding the required notification during a CPS screening.

OAR 413015-00220 about the extension of deadlines during a CPS screening is being amended to implement the provisions of HB 3113, 2007 Or. Laws ch. 674, and to make permanent temporary rules that were filed on January 1, 2008 by restating the Department's policy regarding the extension of deadlines during a CPS screening.

OAR 413-015-0405 about the CPS response time lines is being amended to implement the provisions of HB 3113, 2007 Or. Laws ch. 674, and to make permanent temporary rules that were filed on January 1, 2008 by restating the Department's policy regarding the response time to a CPS assessment.

OAR 413-015-0520, 413-015-0525, 413-015-0530, 413-015-0535, 413-015-0540, 413-015-0545, 413-015-0550, 413-015-0555, 413-015-0560, and 413-015-0565 about day care investigations are being adopted to implement the provisions of HB 3113, 2007 Or. Laws ch. 674, which mandates that the Department respond to child abuse and neglect reports in a child care facility, decide roles of the investigation with law enforcement, and notify the Child Care Division of the receipt of a report and the outcome, and to make permanent temporary rules that were filed on January 1, 2008. These rules provide the Department's policy regarding the investigation of child abuse or neglect in a day care facility.

OAR 413-015-1000 about the disposition of a CPS assessment is being amended to implement the provisions of HB 3113, 2007 Or. Laws ch. 674, and to make permanent temporary rules that were filed on January 1, 2008 by restating the Department's policy for the dispositions of CPS assessments that are classified as "unable to locate" and "No CPS assessment completed."

In addition, the above rules may have also been 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:	Time:	Location:
4-22-08	8:30 a.m.	Rm. 254, 500 Summer St. NE Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005

Other Auth.: Sec. 471(a)(20) of the Social Security Act (42 U.S.C. 671(a)(20))

Stats. Implemented: ORS 181.010, 181.537, 181.560 & 418.016

Proposed Amendments: 413-120-0400, 413-120-0410, 413-120-0420, 413-120-0440, 413-120-0450, 413-120-0455, 413-120-0460, 413-120-0470

Proposed Repeals: 413-120-0430

Last Date for Comment: 4-24-08, 5 p.m.

Summary: OAR 413-120-0400 to 413-120-0470 (Child Welfare Policy I-G.1.4) about criminal background checks for individuals who are seeking to provide relative, foster, or adoptive care to children in the Department's custody are being amended to make the rules consistent with a recent change to the Department's Certification Standards (OAR 413-200-0390) that increased the recertification period for foster homes from one year to two years and to make permanent a temporary rule amended January 1, 2008. These rules are also being amended to replace old terminology with new termi-

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nology, add cross-references to other rules and laws, and follow standard formatting.

OAR 413-120-0400 about the purpose of OAR 413-120-0400 to 413-120-0470 is being amended to replace old terminology with new terminology, add cross-references to other rules and laws, follow standard formatting, and make permanent a temporary rule amended January 1, 2008.

OAR 413-120-0410 about the scope of these criminal background check rules is being amended to replace old terminology with new terminology, add cross-references to other rules and laws, follow standard formatting, and make permanent a temporary rule amended January 1, 2008.

OAR 413-120-0420 about the definitions of terms used in these criminal background check rules is being amended to add definitions for "subject individual" and "young adult," replace old terminology with new terminology, add cross-references to other rules and laws, follow standard formatting, and make permanent a temporary rule amended January 1, 2008.

OAR 413-120-0430 about subject individuals is being repealed because the definition of subject individual has been moved to OAR 413-120-0420.

OAR 413-120-0440 about the limitation of inquiries is being amended to replace old terminology with new terminology, add cross-references to other rules and laws, follow standard formatting, and make permanent a temporary rule amended January 1, 2008.

OAR 413-120-0450 about the consideration of the criminal history of individuals subject to criminal background checks is being amended to replace old terminology with new terminology, add cross-references to other rules and laws, follow standard formatting, and make permanent a temporary rule amended January 1, 2008.

OAR 413-120-0455 about the consideration of arrests of subject individuals is being amended to replace old terminology with new terminology, add cross-references to other rules and laws, follow standard formatting, and make permanent a temporary rule amended January 1, 2008.

OAR 413-120-0460 about procedures used for evaluating the criminal history of individuals subject to criminal background checks is being amended to make the rules consistent with a recent change to the Department's Certification Standards (OAR 413-200-0390) that increased the recertification period for foster homes from one year to two years, replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting and to make permanent a temporary rule amended January 1, 2008.

OAR 413-120-0470 about the rights for review and contested case hearings for subjects individuals is being amended to replace old terminology with new terminology, add cross-references to other rules and laws, follow standard formatting, and make permanent a temporary rule amended January 1, 2008.

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

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

Rule Caption: Coordination with DHS agency-wide rules related to MMIS/enrollment and claims submission process.

Date:	Time:	Location:
4-18-08	10:30 a.m.	HSB Bldg., Rm. 160 500 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: 410-120-0025

Proposed Repeals: 410-120-0025(T)

Last Date for Comment: 4-24-08

Summary: The General Rules Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to clients. Having temporarily amended 410-120-0025, DMAP will permanently amend the rule with this Notice to expedite coordination and consistency between provider enrollment and claims process rules recently adopted by the Department of Human Services (new DHS rules), effective January 1, 2008, and similar current DMAP rules. The new DHS rules were adopted, on a department-wide basis, for implementation of the improved MMIS system to provide a basic framework and enhance provider enrollment functions for medical assistance providers. The new DHS rules, together with DMAP rules, inform providers, and potential providers, about the provider enrollment process and how to submit claims for payment.

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: Require prior authorization on bariatric surgery and revise sterilization consent forms.

Date:	Time:	Location:
4-18-08	10:30 a.m.	HSB bldg., Rm. 160 500 Summer St. NE Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 404.110, 409.050 & 414.065

Stats. Implemented: ORS 414.065 & 414.065

Proposed Amendments: 410-125-0080, 410-130-0200, 410-130-0580

Last Date for Comment: 4-24-08

Summary: The Hospital Services and the Medical-Surgical Services administrative rules govern payment for the Division of Medical Assistance Programs' payments for services provided to certain clients. On December 20, 2007, DMAP temporarily amended the above rules to align with coverage reflected in the January 1, 2008 Oregon Health Services Commission's (HSC) Prioritized List of Health Services (Prioritized List) referenced in OAR 410-141-0520. The Prioritized List coverage shows that bariatric surgery, due to HSC's extensive guidelines, requires prior authorization. Based upon the October 31, 2007 CMS approval of the Prioritized List, DMAP will permanently amend rules 410-125-0080 and 410-130-0200 to indicate that the prior authorization required for this new coverage of bariatric surgery is effective retroactively to January 1, 2008.

Having temporarily amended 410-130-0580 to reflect the CMS approval October 2007 of the revised sterilization and hysterectomy forms and the resulting administrative requirements, this is the Notice of Proposed Rulemaking to permanently amend this rule, effective on or before May 15, 2009.

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: Public Health Emergencies.

Date:	Time:	Location:
4-25-08	1:30 p.m.	Portland State Office Bldg. 500 Oregon St. NE, Rm. 1-A Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 409.050, 401.651-401.670 & 431.266

Stats. Implemented: ORS 431.262, 431.264, 433.441-433.452, 401.651-401.670 & 431.266

NOTICES OF PROPOSED RULEMAKING

Proposed Adoptions: 333-003-0065, 333-003-0200
Proposed Amendments: 333-003-0020, 333-003-0040, 333-003-0050, 333-003-0070, 333-003-0080, 333-003-0100, 333-003-0110, 333-003-0115, 333-003-0125, 333-003-0130
Proposed Repeals: 333-003-0030, 333-003-0060
Last Date for Comment: 4-29-08, 5 p.m.

Summary: The Oregon Department of Human Services, Public Health Division is proposing to conform OAR 333, Division 3, to the changes made by HB 2185. HB 2185 passed in the 2007 session, amended the state's public health emergency laws in ORS 433. These rule amendments add definitions, and specify the powers of the Public Health Director during a public health emergency, such as adopting new disease reporting requirements, issuing diagnostic and treatment protocols, imposing isolation and quarantine, allocating scarce medical resources, directing the closing of children's facilities and schools, issuing guidelines to businesses for work restriction, and imposing civil penalties, up to \$500 per day, for individuals and institutions that do not comply with the requirements and actions taken under the statute and rules.

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

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Rule Caption: Indoor Clean Air Act.

Date:	Time:	Location:
5-1-08	2 p.m.	Deschutes Co. Service Center Barnes Sawyer Rm., 1300 Wall St. Bend, OR
5-2-08	2 p.m.	St. Anthony's Hospital Cascade Rm. 1601 SE Court Ave. Pendleton, OR 97801
5-5-08	10 a.m.	Portland State Office Bldg. Rm. 1-A 800 NE Oregon St. Portland, OR 97232
5-7-08	2 p.m.	Douglas Co. Health Dept. 621 Madrone, Rm. 1B (basement) Roseburg, OR

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 433.855
Stats. Implemented: ORS 433.835-433.875, 433.990 & OL 2007, Ch. 602

Proposed Adoptions: 333-015-0062, 333-015-0064, 333-015-0066, 333-015-0068, 333-015-0069, 333-015-0082

Proposed Amendments: 333-015-0025, 333-015-0030, 333-015-0035, 333-015-0040, 333-015-0045, 333-015-0070, 333-015-0075, 333-015-0080, 333-015-0085, 333-015-0090

Proposed Repeals: 333-015-0034, 333-015-0050, 333-015-0060, 333-015-0065

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

Summary: The Oregon Department of Human Services, Public Health Division is proposing to adopt, amend and repeal rules related to the implementation of the Indoor Clean Air Act based on changes to the Act made by the 73rd legislative assembly (Senate Bill 571, Oregon 2007 Laws Chapter 602, effective January 1, 2009).

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: Client-Employed Provider Program.

Date:	Time:	Location:
4-22-08	2 p.m.	Human Services Bldg. 500 Summer St NE, Rm. 137AB Salem, OR 97301

Hearing Officer: Staff

Stat. Auth.: ORS 409.050 & 410.090

Other Auth.: ORS 243.650, 243.676 & 243.672

Stats. Implemented: ORS 410.010, 410.020, 410.070, 410.612 & 410.614

Proposed Amendments: 411-031-0040

Last Date for Comment: 4-24-08, 5 p.m.

Summary: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is proposing to permanently adopt the November 1, 2007 temporary amendments to OAR 411-031-0040 to reflect the 2007-2009 Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union (SEIU), Local 503, Oregon Public Employees Union (OPEU).

Rules Coordinator: Christina Hartman

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

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Department of Justice Chapter 137

Rule Caption: Updating Procedural Rules and Public Records Rules, Increasing Fees.

Stat. Auth.: ORS 183.341 & 192.430(2)

Stats. Implemented: ORS 183.341 & 192.440(4)

Proposed Amendments: 137-008-0000, 137-008-0005, 137-008-0010, 137-008-0020

Last Date for Comment: 4-25-08

Summary: The proposed changes would add email delivery as an express option for providing notice of rulemaking activities; update the version of the Model Rules of Procedure that apply to the Department of Justice; update fees for staff time required to respond to public records requests to accurately reflect costs; update the charge for two of the Department's publications to reflect costs; and update fees for electronic reproduction of records to reflect increased costs and new technology.

Rules Coordinator: Carol Riches

Address: Department of Justice, 1162 Court St. NE, Salem, OR 97301

Telephone: (503) 947-4700

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

Rule Caption: Update language in definitions to allow electronic initial documents, and add language clarifying dedicated funding of fees collected.

Stat. Auth.: ORS 476.030, 480.310-480.385

Stats. Implemented: ORS 480.310-480.385

Proposed Amendments: 837-020-0035, 837-020-0115

Last Date for Comment: 4-22-08

Summary: Update language in definitions to allow electronic initial documents, and add language clarifying dedicated funding of fees collected.

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

NOTICES OF PROPOSED RULEMAKING

Rule Caption: Change the permit application postmark date from December 1 to December 18.

Stat. Auth.: ORS 476.030, 480.310–480.385

Stats. Implemented: ORS 480.310–480.385

Proposed Amendments: 837-012-0520

Last Date for Comment: 4-22-08

Summary: 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. Also a typographical error is being corrected.

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 Public Safety Standards and Training
Chapter 259

Rule Caption: Defines contested case process when a medical waiver is denied.

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

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

Proposed Amendments: 259-008-0010, 259-008-0011

Last Date for Comment: 4-14-08, Close of Business

Summary: Defines process for contested case hearing when a request for a waiver of the minimum physical requirements is denied by the Board.

Rules Coordinator: Bonnie Salle

Address: 4190 Aumsville Hwy SE, Salem OR 97317

Telephone: (503) 378-2431

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Department of State Lands
Chapter 141

Rule Caption: Amending rules governing special uses on land managed by the Department of State Lands.

Date:	Time:	Location:
4-29-08	10 a.m.–12 p.m.	Land Board Rm. State Lands Bldg. 775 Summer St. NE, Suite 100 Salem, OR 97301-1297
4-30-08	1–3 p.m.	Conference Rm., ODOT Region 4 Annex Bldg. 63085 North Hwy 97 Bend, OR 97701

Hearing Officer: Jeff Kroft

Stat. Auth.: ORS 183 & 273

Other Auth.: Oregon Constitution, Article VIII, Sec. 5

Stats. Implemented: SB 311 (2003)

Proposed Amendments: 141-125-0100 – 141-125-0220

Last Date for Comment: 5-16-08

Summary: The proposed amendments to these rules are required to accommodate uses of state-owned land that are not currently addressed in the rules now in effect. Among these uses are renewable energy projects including, but not limited to wind turbines and wind farms, solar energy installations and biomass generating facilities, upland quarries, the removal of semiprecious stones, petrified wood and fossils for commercial purposes, and the removal of sunken logs, woody debris and abandoned pilings for their commercial value. In addition, these proposed amendments are also needed to clarify definitions and provisions of the existing rules and to address minor “housekeeping” issues such as the change in the name of the Division of State Lands in 2003 to Department of State Lands.

Rules Coordinator: Elizabeth Bott

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

Telephone: (503) 986-5239

Department of Transportation
Chapter 731

Rule Caption: Prequalification for Bidding: Requirements for Mandatory General Prequalification and Special Prequalification.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.430

Proposed Amendments: 731-005-0450

Last Date for Comment: 4-21-08

Summary: This permanent rule change relates to the prequalification requirements for bidding on ODOT Highway and Bridge public improvement projects. It will change the Mandatory General Prequalification requirement to apply only to projects \$100,000 and over; and additionally will allow Special Prequalification even when the Mandatory General Prequalification is not required. ODOT has implemented a new Small Contracting Program for Construction. This program targets small contractors enabling them to competitively bid as a prime contractor on construction projects under \$100,000. By lifting the requirement of Mandatory General Prequalification for projects \$100,000 and under, the small contracting business will not be required to undergo the more rigorous Mandatory General Prequalification process, and also not be subject to an annual application fee of \$100. The Small Contracting Program uses a less stringent prequalification termed a Special Prequalification, which by this rule change will be allowed even though the Mandatory General Prequalification is not. This rule change will accomplish the objective of providing a less stringent prequalification process for the new Small Contracting Program for Construction.

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

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Rule Caption: Bid or Proposal Security: Allows Agency more flexibility in proposal security requirements.

Stat. Auth.: ORS 184.616, 184.619, 279A.050 & 279A.065

Stats. Implemented: ORS 279C.365, 279C.380, 279C.385, 279C.390 & 279C.400

Proposed Amendments: 731-005-0550

Proposed Repeals: 731-005-0550(T)

Last Date for Comment: 4-21-08

Summary: This rule relates to the security requirements for bids and proposals. The proposed amendment will change the rule to be in alignment with Oregon Statute which allows more flexibility in proposal security requirements. Specifically, it will allow less restrictive requirements for proposal security by removing the requirement of a 10 percent security for proposals, and instead allow a proposal security in an amount that ODOT determines to be reasonably necessary. This change will accommodate use of a new contracting method called Construction Manager/General Contractor (CM/GC) where the price is not proposed until well after the contract is executed. Additionally, this rule change will allow ODOT to require Proposal security even when the contract is being negotiated.

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

NOTICES OF PROPOSED RULEMAKING

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

Rule Caption: Identity and Legal Presence Requirements for Driver Licenses and Permits and Identification Cards — Relating Provisions.

Date:	Time:	Location:
4-15-08	6 p.m.	Transportation Bldg., Rm. 122 355 Capitol St. NE Salem, OR
4-16-08	6 p.m.	Multnomah Bldg. Commissioners Brdrm. 501 SE Hawthorne Portland, OR
4-17-08	6 p.m.	Lane Co. Public Service Bldg. Harris Hall 125 E Eighth St. Eugene, OR
4-23-08	6 p.m.	Coos Bay Public Library Myrtlewood Meeting Rm. 525 Anderson Ave Coos Bay, OR
4-24-08	6 p.m.	Jackson Co. Community Justice Downstairs Conference Rm. 1101 W Main St. Medford, OR
4-29-08	6 p.m.	Sky View Middle School 63555 Eighteenth St. Bend, OR
4-30-08	6 p.m.	ODOT Region 5 Headquarters Large Conference. Rm. 3012 Island Dr., La Grande, OR

Hearing Officer: Liz Woods

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.024, 807.040, 807.050, 807.060, 807.120, 807.150, 807.160, 807.173, 807.375, 807.400, 809.310, 809.411, 811.603 & OL 2008 Ch. 1

Stats. Implemented: ORS 801.562, 802.012, 802.200, 802.500, 803.015, 803.050, 803.140, 803.220, 803.370, 807.024, 807.040, 807.050, 807.060, 807.066, 807.110, 807.150, 807.160, 807.173, 807.220, 807.230, 807.230, 807.370, 807.375, 807.400, 807.405, 807.410, 807.420, 809.135, 809.310, 809.320, 821.080 & OL 2008 Ch. 1

Proposed Adoptions: 735-062-0002, 735-062-0015, 735-062-0016, 735-062-0032, 735-062-0033, 735-062-0125, 735-062-0220

Proposed Amendments: 735-010-0008, 735-010-0100, 735-010-0130, 735-062-0005, 735-062-0010, 735-062-0020, 735-062-0030, 735-062-0090, 735-062-0110, 735-062-0120, 735-070-0004, 735-070-0010, 735-070-0020

Proposed Repeals: 735-062-0021

Proposed Ren. & Amends: 735-062-0000 to 735-062-0007

Last Date for Comment: 5-2-08

Summary: Oregon Laws 2008, Chapter 1, requires that an applicant for a driver license, driver permit, or identification card provide proof of a Social Security Number (SSN) or ineligibility for a SSN and proof of legal presence in the United States. These rules define the documents that may be used to prove a SSN (or ineligibility for a SSN), the documents that may be used to prove legal presence, and the documents that may be used to prove an applicant's identity, date of birth, and address.

ORS 807.024 requires that a person applying for issuance, renewal or replacement of a driver license, driver permit or identification card submit to collection of biometric data by the Department of Transportation to establish the person's identity. On July 1, 2008, the department will begin using facial recognition software to determine whether the biometric data for a person applying for any driver license, driver permit or identification card matches the biometric data already on file for that person. This rulemaking covers those sections of the legislation that become operative on July 1, 2008.

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

Department of Transportation, Highway Division Chapter 734

Rule Caption: Prequalification for Bidding: Requirements for Mandatory General Prequalification and Special Prequalification.

Stat. Auth.: ORS 184.616, 184.619, 279A.050, 279A.065 & 279C.430

Stats. Implemented: ORS 279C.430

Proposed Amendments: 734-010-0230, 734-010-0260

Last Date for Comment: 4-21-08

Summary: This permanent rule change relates to the prequalification requirements for bidding on ODOT Highway and Bridge public improvement projects. It will change the Mandatory General Prequalification requirement to apply only to projects \$100,000 and over; and additionally will allow Special Prequalification even when the Mandatory General Prequalification is not required. ODOT has implemented a new Small Contracting Program for Construction. This program targets small contractors enabling them to competitively bid as a prime contractor on construction projects under \$100,000. By lifting the requirement of Mandatory General Prequalification for projects \$100,000 and under, the small contracting business will not be required to undergo the more rigorous Mandatory General Prequalification process, and also not be subject to an annual application fee of \$100. The Small Contracting Program uses a less stringent prequalification termed a Special Prequalification, which by this rule change will be allowed even though the Mandatory General Prequalification is not. This rule change will accomplish the objective of providing a less stringent prequalification process for the new Small Contracting Program for Construction.

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

Rule Caption: Vehicles or loads subject to variance permits, relating to lift axles.

Stat. Auth.: ORS 184.616, 184.619, 810.050, 810.060 & 818.200

Stats. Implemented: ORA 818.200, 818.220 & 818.225

Proposed Amendments: 734-074-0010, 734-082-0015, 734-082-0040

Last Date for Comment: 4-21-08

Summary: The proposed amendments:

(1) Clarify that a lift axle is not required to be deployed when the weight on a tire, an axle, tandem axle and group of axles are legal weight and the overall gross vehicle weight of the combination does not exceed the overall authorized weight;

(2) Remove a requirement that an auxiliary axle be deployed if it is included in the specified axles required on a variance permit;

(3) Update revision dates to route maps issued with variance permits; and

(4) Clarify the hauling equipment that can be part of an unladen heavy haul combination and transported on the trailer of an unladen heavy haul combination under an annual variance permit within specified size limits over specified routes.

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

Rules Coordinator: Lauri Kunze

NOTICES OF PROPOSED RULEMAKING

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

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Employment Department
Chapter 471

Rule Caption: Customer Information and Disclosure (Confidentiality)

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665

Proposed Adoptions: 471-010-0080, 471-010-0085, 471-010-0090, 471-010-0100, 471-010-0105, 471-010-0110, 471-010-0115, 471-010-0120, 471-010-0125

Proposed Repeals: 471-010-0050, 471-010-0051, 471-010-0052, 471-010-0054, 471-010-0055, 471-010-0057

Last Date for Comment: 5-20-08

Summary: The adopted rules (0080, 0085, 0090, 0095, 0100, 0105, 0110, 0120, 0125) represent the Employment Department's new confidentiality rules which reflect the new language of ORS 657.665 regarding customer information and disclosure. These rules outline the department's confidentiality process.

The repealed rules (0050, 0051, 0052, 0054, 0055, 0057) are the department's old confidentiality rules; they are repealed and replaced with the newly adopted rules.

Rules Coordinator: Janet Orton

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

Telephone: (503) 947-1724

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Rule Caption: Misrepresentation Disqualification.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.215

Proposed Amendments: 471-030-0052

Last Date for Comment: 5-20-08

Summary: Changes the penalties for fraud and misrepresentation to be in line with the new statutory penalties.

Rules Coordinator: Janet Orton

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

Telephone: (503) 947-1724

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Land Conservation and Development Department
Chapter 660

Rule Caption: Permanent rules interpreting and implementing 2007 Ballot Measure 49, amending current rules, adopting additional rules.

Date:	Time:	Location:
5-1-08	1 p.m.	635 Capitol St. NE Basement Hearing Rm. Salem, OR

Hearing Officer: LCDC

Stat. Auth.: ORS 195.300–195.336, OR Laws 2007, Ch. 183 & 197

Other Auth.: Statewide Land Use Planning Goal 2

Stats. Implemented: ORS 195.300–195.336, 197.015, 197.0040, 197.045, 197.065, 197.090, 197.353 & OR Laws 2007, Ch. 424

Proposed Adoptions: 660-041-0060, 660-041-0070, 660-041-0080, 660-041-0090, 660-041-0100, 660-041-0500, 660-041-0510, 660-041-0520, 660-041-0530, 660-041-0540, 660-041-0550, 660-041-0560

Proposed Amendments: 660-002-0010, 660-002-0015, 660-041-0000, 660-041-0010, 660-041-0020, 660-041-0030, 660-041-0040, Rules in 660-002, 660-041

Proposed Repeals: 660-041-0050

Last Date for Comment: 5-1-08, Close of Hearing

Summary: These proposed permanent rules specify procedures and filing requirements for persons submitting a new 2007 Ballot Measure 49 claim. The rules address the effect of Measure 49 on waivers that have already been approved by the DLCD under 2004 Ballot

Measure 37, including the effect for purposes of the state agency coordination requirements under ORS 197.180. In addition, these rules amend the LCDC delegation of authority to the Director if DLCD to carry out the responsibilities and exercise the authorities of the Commission and DLCD to review and respond to claims under Measure 37 and 49. These proposed rules establish the procedures for supplemental review of Measure 37 claims under Measure 49. The proposed rules also interpret certain Measure 49 provisions for the purposes of determining whether Measure 37 claimants are entitled to relief under Measure 49 and, if so, what relief they are entitled to. The interpretive rules clarify how DLCD will determine what land divisions and residential dwellings were lawfully permitted when a claimant acquired the property. The proposed permanent rules replace, repeal, amend or supplement temporary rules to implement Measure 49 adopted in December of 2007 and February of 2008, which expire on June 7, 2008.

An advisory committee was not used to assist the agency in drafting the proposed rules due to the need to act quickly to clarify requirements for the large number of Measure 37 claims that must go through supplemental review by the department in order to carry out Measure 49 and the need to permanently adopt the temporary rules implementing and clarifying Measure 49 prior to the expiration of those rules on June 7, 2008.

Rules Coordinator: Sarah Watson

Address: Land Conservation and Development Department, 635 Capitol St. NE, Suite 150, Salem, OR 97301

Telephone: (503) 373-0050, ext. 271

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Landscape Contractors Board
Chapter 808

Rule Caption: Amended to meet new requirements and house-keeping.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 183.341, 671.610, 671.571, 671.595

Proposed Adoptions: 808-002-0623

Proposed Amendments: 808-001-0005, 808-002-0734, 808-003-0030, 808-003-0110, 808-003-0125, 808-030-0010

Last Date for Comment: 4-21-08, Close of Business

Summary: 808-001-0005 — Amended to adopt the current version of the Attorney General's Uniform and Model Rules of Procedure 808-002-0623 — Adopts definition of manages or shares in the management

808-002-0734 - removes previous definition of manages or shares in the management

808-003-0030 — Clarifies when a probationary application expires

808-003-0110 — Clarifies the Probationary All Phase Plus Back-flow landscape contracting business license must obtain a \$15,000 bond, irrevocable letter of credit or deposit

808-003-0125 — Requires managing employee or owner to notify the LCB if the are no longer acting in this role.

808-030-0010 — Removes requirement that managing employee or owner to notify the LCB if the are no longer acting in this role from this rule because it is being adopted under the notification rule of 808-003-0125.

Rules Coordinator: Kim Gladwill-Rowley

Address: 2111 Front Street NE Ste 2-101, Salem OR 97301

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

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Oregon Commission on Children and Families
Chapter 423

Rule Caption: CCDF funds to be used in accordance with current State Plan for federal Child Care and Development Fund.

Date:	Time:	Location:
4-14-08	10 a.m.	530 Center St. NE, Suite 405 Salem, OR 97301

Hearing Officer: Marsha Clark

Stat. Auth.: ORS 417.705–417.797 & 419A.170

NOTICES OF PROPOSED RULEMAKING

Stats. Implemented: ORS 417.705–417.797 & 419A.170

Proposed Amendments: 423-010-0024

Last Date for Comment: 4-28-08

Summary: CCDF program and services support priorities established in the State Plan for the federal Child Care and Development Fund and the Child Care and Development Fund Guidelines.

Rules Coordinator: Marsha Clark

Address: Oregon Commission on Children and Families, 530 Center St. NE, Suite 405, Salem, OR 97301

Telephone: (503) 373-1283

Oregon Department of Education Chapter 581

Rule Caption: Adds requirements to English as a Second Language programs provided by school districts.

Stat. Auth.: ORS 327.013 & 327.125

Stats. Implemented: ORS 327.013 & 327.125

Proposed Amendments: 581-023-0100

Last Date for Comment: 4-23-08, 5 p.m.

Summary: School district receive additional weight in school funding formula for students who are enrolled in English as a Second Language (ESL) program. Existing rules specify that ESL programs must meet basic federal guidelines. The amendments to rules add that school districts must describe the district's educational approach and provide a process for transition from English Language Learner (ELL) services.

Rules Coordinator: Paula Merritt

Address: 255 Capital St NE, Salem 97310

Telephone: (503) 947-5746

Rule Caption: Revises description of alcohol and drug prevention program provided by school districts.

Stat. Auth.: ORS 326.051 & 336.235

Other Auth.: SB 1066 (2008)

Stats. Implemented: ORS 336.067 & 336.222

Proposed Amendments: 581-022-0413

Last Date for Comment: 4-23-08, 5 p.m.

Summary: In 2008, SB 1066 directed school districts to include information on anabolic steroids and performance-enhancing substances, including prevention strategies, strength-building alternatives and the understanding of health food labels in health and physical education curricula for kindergarten through grades 12 students. Rules will provide districts direction on the inclusion in health and physical education curricula.

Rules Coordinator: Paula Merritt

Address: 255 Capital St NE, Salem 97310

Telephone: (503) 947-5746

Rule Caption: Modifies rules relating to fingerprinting of education personnel who are not required to be licensed.

Stat. Auth.: ORS 326.603 & 345.515

Stats. Implemented: ORS 326.603

Proposed Amendments: 581-022-1730, 581-022-1732

Last Date for Comment: 4-23-08, 5 pm

Summary: The Department of Education requests criminal records checks from the Department of State Police for education personnel who are not licensed with the Teacher Standards and Practices Commission. School districts may not employ personnel who have been convicted of crimes listed in ORS 342.143 or who have made a false statement as to the conviction of a crime if the conviction occurred 10 years prior to the background check. ODE notifies private schools of the conviction of a crime listed in ORS 342.143 or any false statement about a crime if the conviction occurred 10 years prior to the background check. The amendments to the rules also update the list of crimes from ORS 342.143 to reflect legislative changes to the statute.

Rules Coordinator: Paula Merritt

Address: 255 Capital St NE, Salem 97310

Telephone: (503) 947-5746

Rule Caption: Prescribes requirements for student attendance in charter schools that offer on-line courses.

Stat. Auth.: ORS 338.025

Stats. Implemented: ORS 338.125

Proposed Adoptions: 581-020-0339

Last Date for Comment: 4-23-08, 5 pm

Summary: The rule places requirements on charter schools that offer on-line courses for calculation of percentage of students who attend charter school and reside within school district where charter school is located. The rule defines full-time equivalent student and specifies who the rule applies to.

Rules Coordinator: Paula Merritt

Address: 255 Capital St NE, Salem 97310

Telephone: (503) 947-5746

Rule Caption: Modifies requirements relating to high school diploma.

Stat. Auth.: ORS 326.051 & 329.451

Stats. Implemented: ORS 329.451

Proposed Amendments: 581-022-1130

Last Date for Comment: 4-23-08, 5 p.m.

Summary: The rule amendment adds requirements for students to develop an education plan and to build an education profile. These requirements were previously in another rule. The rule also allows students to satisfy the requirements for a diploma is less than four years.

Rules Coordinator: Paula Merritt

Address: 255 Capital St NE, Salem 97310

Telephone: (503) 947-5746

Rule Caption: Modifies requirements of Comprehensive Guidance and Counseling Program administered by school districts.

Stat. Auth.: ORS 326.051 & 329.275

Stats. Implemented: ORS 329.255, 329.265 & 329.385

Proposed Amendments: 581-022-0405, 581-022-1510

Proposed Ren. & Amends: 581-023-0050 to 581-022-1512

Last Date for Comment: 4-23-08, 5 p.m.

Summary: Modifies requirements for comprehensive guidance and counseling programs provided by school districts. Directs schools districts to implement career education as part of district's comprehensive guidance and counseling programs. Modifies requirements for child development specialist programs offered by school districts.

Rules Coordinator: Paula Merritt

Address: 255 Capital St NE, Salem 97310

Telephone: (503) 947-5746

Oregon Health Licensing Agency Chapter 331

Rule Caption: Establishment of qualification requirements, practice standards and fees for certified clinical and associate sex offender therapists.

Date: 4-25-08

Time: 9 a.m.–12 p.m.

Location: Rhoades Conference Rm.
700 Summer St. NE, Suite 320
Salem, OR 97301-1287

Hearing Officer: Bert Krages

Stat. Auth.: ORS 675.360–675.410

Other Auth.: ORS 676.607, 676.612 & 676.615

Stats. Implemented: ORS 675.360–675.410

Proposed Adoptions: 331-800-0010, 331-800-0020, 331-810-0020, 331-810-0030, 331-810-0035, 331-810-0040, 331-810-0050, 331-820-0010, 331-820-0020, 331-830-0005, 331-830-0010, 331-830-0020, 331-840-0010, 331-840-0020, 331-840-0030, 331-840-0040, 331-840-0050, 331-840-0060, 331-850-0010

Last Date for Comment: 4-24-08, 5 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: Passage of HB 3233 (Oregon Laws 2007, chapter 841) by the 2007 Legislature created the Sex Offender treatment board within the Oregon Health Licensing Agency, and establishing a Title Act for certifying clinical and associate sex offender therapists. The law became effective July 27, 2007. Board members were appointed by the Governor, confirmed by the Senate, and the Board held an initial meeting on November 30, 2007 to start the process of developing operating rules.

The agency, in consultation with the Board, adopted temporary rules that became effective **March 15, 2008**. The rules address definitions, fee structure, requirements for application and certification of clinical and associate level therapists, criteria for qualifying individuals who are currently providing sex offender therapy for certification under a one-year limitation (grandfather provision), and reciprocal qualification criteria. Adoption of the temporary rules was necessary to initiate the certification of qualified applicants and to implement regulatory and administrative objectives and fund the program; permanent adoption is needed to sustain the rule requirements.

Concurrently, the Board developed rules establishing associate therapist supervision requirements, continuing education requirements and audit protocols, linkage to the central agency's investigative authority for discipline and enforcement action, and a comprehensive code of professional conduct addressing: standards of practice, professional conduct and client relationships, communications with other professionals, mandatory reporting, client confidentiality/disclosure and informed consent, and client records.

Rules Coordinator: Patricia C. Allbritton

Address: Oregon Health Licensing Agency, 700 Summer St. NE, Suite 320, Salem, OR 97301

Telephone: (503) 378-2088

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Oregon Liquor Control Commission Chapter 845

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

Stat. Auth.: ORS 471 including 471.030, 471.040, 471.175, 471.430, 471.710 & 471.730

Stats. Implemented: ORS 471.175, 471.430, 471.710, 471.750, 471.752(2) & 471.757

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

Last Date for Comment: 4-29-08

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

Rules Coordinator: Jennifer Huntsman

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

Telephone: (503) 872-5004

Oregon Public Employees Retirement System Chapter 459

Rule Caption: New rule addressing review and appeal process for employers to follow in agency disputes.

Date:	Time:	Location:
4-22-08	2 p.m.	PERS Boardroom 11410 SW 68th Pkwy Tigard, OR

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005, 238.105 & 238.300

Proposed Amendments: 459-010-0014, 459-010-0042

Last Date for Comment: 4-30-08

Summary: Modification of rules to establish standards under which creditable service may be awarded incident to a dispute resolution resulting in a retroactive salary payment. Modifications will also update and revise provisions of 459-010-0042 regarding terminated members and clarify interaction with 459-010-0014.

Copies of the proposed rules are available to any person upon request. The rules are also available at http://www.oregon.gov/PERS/about_us.shtml

Public comment may be mailed to the agency address or sent via email to Daniel.Rivas@state.or.us

Rules Coordinator: Daniel Rivas

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

Telephone: (503) 603-7713

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Rule Caption: Adopt the revised Attorney General's Model Rules of Procedure.

Date:	Time:	Location:
4-22-08	2 p.m.	PERS Boardroom 11410 SW 68th Pky Tigard, OR 97223

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 183.341 & 238.650

Stats. Implemented: ORS 238.005-238.715 & 237.410-237.620

Proposed Amendments: 459-001-0005

Last Date for Comment: 4-22-08, Close of Hearing

Summary: 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

Address: 11410 SW 68th Parkway, Tigard, OR 97223

Telephone: (503) 603-7713

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Oregon State Lottery Chapter 177

Rule Caption: Amends rules to correct cross references; General housekeeping changes for clarity.

Date:	Time:	Location:
4-22-08	2-3 p.m.	Oregon Lottery 500 Airport Rd. SE Salem, OR

Hearing Officer: Larry Trott

Stat. Auth.: ORS 461.217, 461.250 & 461.300

Stats. Implemented: ORS 461.217, 461.250 & 461.300

Proposed Amendments: 177-040-0003, 171-040-0051

Last Date for Comment: 4-22-08, 3 p.m.

Summary: The Oregon Lottery has initiated permanent rulemaking to amend these two administrative rules to update cross references, amend a reference to percentage of sales, and to perform general housekeeping changes for clarity.

Rules Coordinator: Mark W. Hohlt

NOTICES OF PROPOSED RULEMAKING

Address: Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301
Telephone: (503) 540-1417

.....
Oregon State Treasury
Chapter 170

Rule Caption: Changes to public funds collateralization rules.

Date:	Time:	Location:
4-24-08	9 a.m.	350 Winter St. NE, #100 Salem, OR 97301-3896

Hearing Officer: Jusy Whaley-Fultz

Stat. Auth.: ORS 295

Other Auth.: HB 2901 (2007)

Stats. Implemented: ORS 295

Proposed Adoptions: Rules in 170-040

Proposed Repeals: Rules in 170-030

Last Date for Comment: 4-24-08

Summary: Repealing Division 30, Collateral Pool and adopting Division 40, Public Funds Collateralization rules. Division 40 rules outline the new procedures for the State Treasurer, public funds bank depositories and public officials relative to carrying out the requirements set forth by the 2007 legislative changes to ORS 295.

Rules Coordinator: Sally Furze

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

Telephone: (503) 378-4990

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Oregon University System
Chapter 580

Rule Caption: To establish Tuition and Fees for the 2008–09 Academic Year, including Room and Board rates.

Date:	Time:	Location:
5-6-08	1–2 p.m.	Rm. B214, Kerr Admin. Bldg. Oregon State University Corvallis, OR
5-19-08	1–2 p.m.	Rm. B214, Kerr Admin. Bldg. Oregon State University Corvallis, OR

Hearing Officer: Tiffany Corbett

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Amendments: 580-040-0040

Last Date for Comment: 5-21-08

Summary: To establish Tuition and Fees for the 2008–09 Academic Year, including Room and Board rates.

Rules Coordinator: Marcia M. Stuart

Address: Oregon University System, PO Box 3175, Eugene, OR 97403-0175

Telephone: (541) 346-5749

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Rule Caption: Rules for procurement, contracting, construction, purchase and sale of real property.

Date:	Time:	Location:
4-15-08	10 a.m.	Susan Campbell Hall (UO) 3rd Flr. Conference Rm. 1431 Johnson Ln. Eugene, OR 97403

Hearing Officer: George Marlton

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351 & 293.462

Proposed Adoptions: 580-060-0000, 580-060-0005, 580-060-0010, 580-060-0015, 580-060-0020, 580-060-0025, 580-060-0030, 580-060-0035, 580-060-0040, 580-060-0045, 580-060-0050, 580-060-0055, 580-060-0060, 580-061-0000, 580-061-0005, 580-061-0010, 580-061-0015, 580-061-0020, 580-061-0025, 580-061-0030, 580-061-0035, 580-061-0040, 580-061-0045, 580-061-0050, 580-061-0055, 580-061-0060, 580-061-0065, 580-061-0070, 580-061-0075, 580-061-0080, 580-061-0085, 580-061-0090, 580-061-0095, 580-061-0100, 580-061-0105, 580-061-0110, 580-061-0115, 580-

061-0120, 580-061-0125, 580-061-0130, 580-061-0135, 580-061-0140, 580-061-0145, 580-061-0150, 580-061-0155, 580-061-0160, 580-062-0000, 580-062-0005, 580-062-0010, 580-062-0015, 580-062-0020, 580-063-0000, 580-063-0005, 580-063-0010, 580-063-0015, 580-063-0020, 580-063-0025, 580-063-0030, 580-063-0035, 580-063-0040, 580-063-0045

Proposed Amendments: 580-042-0010

Proposed Repeals: 580-040-0100, 580-040-0200, 580-040-0205, 580-040-0210, 580-040-0215, 580-040-0220, 580-040-0223, 580-040-0225, 580-040-0230, 580-040-0235, 580-040-0240, 580-040-0245, 580-040-0255, 580-040-0260, 580-040-0275, 580-040-0277, 580-040-0280, 580-040-0285, 580-040-0290, 580-040-0292, 580-040-0295, 580-050-0001, 580-050-0005, 580-050-0010, 580-050-0015, 580-050-0020, 580-050-0025, 580-050-0032, 580-050-0033, 580-050-0040, 580-050-0041, 580-050-0042, 580-050-0100, 580-050-0105

Last Date for Comment: 4-15-08

Summary: The administrative rules governing procurements of professional services, goods and services, construction services, purchase and sale of real property, and use of university property.

Rules Coordinator: Marcia M. Stuart

Address: Oregon University System, PO Box 3175, Eugene, OR 97403-0175

Telephone: (541) 346-5749

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Oregon University System,
Oregon State University
Chapter 576

Rule Caption: Rules for procurement, contracting, construction, purchase and sale of real property.

Date:	Time:	Location:
4-15-08	10 a.m.	Susan Campbell Hall (UO), 3rd Flr Conference Rm. 1431 Johnson Ln. Eugene, OR 97403

Hearing Officer: George Marlton

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351 & 293.462

Proposed Repeals: 576-008-0200, 576-008-0205, 576-008-0210, 576-008-0215, 576-008-0220, 576-008-0223, 576-008-0225, 576-008-0228, 576-008-0230, 576-008-0235, 576-008-0240, 576-008-0245, 576-008-0255, 576-008-0260, 576-008-0275, 576-008-0277, 576-008-0280, 576-008-0282, 576-008-0285, 576-008-0287, 576-008-0290, 576-008-0292, 576-008-0295

Last Date for Comment: 4-15-08

Summary: The administrative rules governing procurements of professional services, goods and services, construction services, purchase and sale of real property, and use of university property.

Rules Coordinator: Marcia Stuart

Address: Oregon University System, PO Box 3175, Eugene, OR 97403-0175

Telephone: (541) 346-5749

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Oregon University System,
University of Oregon
Chapter 571

Rule Caption: Rules for procurement, contracting, construction, purchase and sale of real property.

Date:	Time:	Location:
4-15-08	10 a.m.	Susan Campbell Hall (UO), 3rd Flr Conference Rm. 1431 Johnson Ln. Eugene, OR 97403

Hearing Officer: George Marlton

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351 & 293.462

Proposed Repeals: 571-040-0010, 571-040-0015, 571-040-0020, 571-040-0030, 571-040-0040, 571-040-0050, 571-040-0060, 571-

NOTICES OF PROPOSED RULEMAKING

040-0070, 571-040-0080, 571-040-0100, 571-040-0201, 571-040-0251, 571-040-0261, 571-040-0380, 571-040-0382, 571-040-0390, 571-040-0400, 571-040-0410, 571-040-0420, 571-040-0430, 571-040-0440, 571-040-0450, 571-040-0460

Last Date for Comment: 4-15-08

Summary: The administrative rules governing procurements of professional services, goods and services, construction services, purchase and sale of real property, and use of university property.

Rules Coordinator: Marcia Stuart

Address: Oregon University System, PO Box 3175, Eugene, OR 97403-0175

Telephone: (541) 346-5749

Public Utility Commission, Board of Maritime Pilots Chapter 856

Rule Caption: Allows board discretion to waive any or all pre-petition notice provisions.

Stat. Auth.: ORS 776 & 183

Stats. Implemented: ORS 776.115, 776.183 & 183.502

Proposed Amendments: 856-030-0002

Last Date for Comment: 4-24-08

Summary: Allows board discretion to waive provisions of the rule to recognize agreements of the parties outside the dispute resolution process.

Rules Coordinator: Susan Johnson

Address: Public Utility Commission, Board of Maritime Pilots, 800 NE Oregon St., #507, Portland, OR 97232

Telephone: (971) 673-1530

Secretary of State, Archives Division Chapter 166

Rule Caption: Splits retention of County Records, Land Division Plats; Corrects County Survey Field Records.

Date:	Time:	Location:
4-29-08	9 a.m.	State Archives Bldg. 800 Summer St. NE Salem, OR

Hearing Officer: Connor Edmonds

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192.005-192.170 & 357.805-857.895

Proposed Amendments: 166-150-0205

Last Date for Comment: 4-29-08, Close of Hearing

Summary: Allows for permanent retention to apply only to Final Accepted Plats vice all records pertaining to Land Division Plats on the County General Records Retention Schedule, thereby, freeing up storage space for agencies through removing the requirement to retain other Land Division Plat records permanently. Also, makes correction to records description for OAR 166-150-0205(7) by placing Monumentation records in the records description for Land Division Plats OAR 166-150-0205(4).

Rules Coordinator: Julie Yamaka

Address: 800 Summer Street NE., Salem, OR 97310

Telephone: (503) 378-5199

Secretary of State, Corporation Division Chapter 160

Rule Caption: Revise rule on journal ID documentation to comply with Senate Bill 583 (2007).

Stat. Auth.: ORS 194.152

Stats. Implemented: ORS 194.152

Proposed Amendments: 160-100-0210

Last Date for Comment: 4-30-08, Close of Business

Summary: Notaries public do not need to enter an ID number in their journals when relying on documentation for satisfactory evidence of identity. Instead, this rule will require organization, type of ID and the expiration date.

Rules Coordinator: Tom Wrosch

Address: 255 Capitol St. NE Suite 151 Salem, OR 97310

Telephone: (503) 986-2371

Secretary of State, Elections Division Chapter 165

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

Stat. Auth.: ORS 246.150 & 260.262

Stats. Implemented: ORS 260.262

Proposed Amendments: 165-014-0100

Last Date for Comment: 5-1-08

Summary: Each chief petitioner of an initiative or referendum petition who pays any person money or other valuable consideration to obtain signatures on the petition shall keep detailed accounts in accordance with ORS 260.262. This rule is proposed for amendment to require chief petitioners who submit copies of signatures sheets in accordance with ORS 260.262(1) to directly associate those sheets with the payroll records for the individuals who were paid to gather them.

Rules Coordinator: Brenda Bayes

Address: Secretary of State, Elections Division, 141 State Capitol, Salem, OR 97310-0722

Telephone: (503) 986-1518

Teacher Standards and Practices Commission Chapter 584

Rule Caption: Adopt, amend and repeal rules regarding early childhood education, charter school fees, field placement, and housekeeping issues.

Date:	Time:	Location:
4-23-08	1-2 p.m.	TSPC Office 465 Commercial St. NE Salem, OR

Hearing Officer: Victoria Chamberlain

Stat. Auth.: ORS 342 & 183

Stats. Implemented: ORS 342.120-342.200, 342.223-342.232, 342.400-342.985

Proposed Adoptions: 584-065-0120

Proposed Amendments: 584-017-0115, 584-017-0185, 584-021-0105, 584-036-0055, 584-046-0003, 584-046-0016, 584-046-0019, 584-046-0020, 584-046-0021, 584-070-0012

Proposed Repeals: 584-021-0175, 584-036-0060, 584-048-0045

Last Date for Comment: 5-15-08, 4:30 p.m.

Summary: 1. Amends rule to eliminate the work sample at two authorization levels.

2. Clarifies charter school registrations are subject to late fees and reinstatement costs.

3. Converts program approval rule from an authorization to an endorsement and other amendments.

4. Eliminates obsolete language and makes housekeeping amendments to several rules.

5. Repeals redundant and unnecessary rules.

Rules Coordinator: Victoria Chamberlain

Address: Teacher Standards and Practices Commission, 465 Commercial St. NE, Salem, OR 97301

Telephone: (503) 378-6813

ADMINISTRATIVE RULES

Board of Architect Examiners Chapter 806

Rule Caption: IDP and ARE

Adm. Order No.: BAE 1-2008

Filed with Sec. of State: 2-28-2008

Certified to be Effective: 2-28-08

Notice Publication Date: 12-1-2007

Rules Amended: 806-010-0010, 806-010-0020, 806-010-0033, 806-010-0035

Rules Repealed: 806-010-0015

Subject: These rule amendments allow candidates to begin taking the Architect Registration Examination (ARE) as soon as they establish an NCARB Intern Development Program (IDP) record, rather than waiting until they finish the IDP before beginning to take the ARE. Both are still requirements for licensure, but the sequence has been eliminated. These rule amendments also allow for a transition to the newest version of the ARE (and future version changes). In addition, these rules amend the list of jurisdictions recognized by the Oregon Board.

Rules Coordinator: Carol Halford—(503) 763-0662

806-010-0010

Approved Architect Registration and Evaluation Programs

(1) An applicant is required to complete acceptable accredited education, experience, and examination before they may be considered for registration as an architect in Oregon.

(2) The Board adopts the list of accredited education programs in architecture as accredited and published by the National Architectural Accrediting Board (NAAB) as sources of approved education for registration.

(3) The Board adopts the requirements for the Intern Development Program (IDP) published by the National Council of Architectural Registration Boards (NCARB) as the approved internship experience required for registration.

(4) The Board adopts the Architectural Registration Examination (ARE) prepared by NCARB as the approved examination to test applicant qualifications for registration.

(5) A person may be considered as a candidate for registration by following:

- (a) the initial registration process outlined in OAR 806-010-0020; or
- (b) the reciprocal registration process outlined in OAR 806-010-0035;

or

(c) by satisfactorily completing the Broadly Experienced Architect (BEA) program or the Broadly Experienced Foreign Architect (BEFA) program offered through NCARB.

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

Stat. Auth.: ORS 670 & 671

Stats. Implemented: ORS 671.060

Hist.: AE 5, f. 12-22-64; AE 6, f. 6-5-69; AE 11, f. 2-15-74, ef. 3-11-74; AE 13, f. & ef. 4-2-76; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 2-1983, f. & ef. 1-12-83; BAE 1-2008, f. & cert. ef. 2-28-08

806-010-0020

Registration Examination

(1) A person seeking registration by examination must present the Board with an appropriate application and fees, and a complete record demonstrating to the Board that the person has met the required accredited education, experience, and examination, as follows:

(a) A first professional degree in architecture from a NAAB-accredited program of architecture.

(b) After an IDP record is established with NCARB, a candidate may submit an application and examination fee to the Oregon Board.

(c) A candidate may begin taking the ARE only after the Board notifies them, in writing, that the application has been approved.

(d) In order to be evaluated for initial registration, an applicant must demonstrate the following:

(A) Successful completion of the IDP program; and

(B) Successful passing of all divisions of the ARE.

(e) After meeting the above requirements, approved candidates must sit for and pass a jurisprudence examination, attend an oral interview with the Board, and pay registration fees before registration may be granted.

(2) **IDP:** The Board requires completion of acceptable experience, as evaluated by NCARB and found within NCARB's Intern Development

Program Guidelines. Requests for admittance to the IDP should be directed to NCARB.

(3) **ARE:** The Board requires successful completion of all divisions of the ARE. An application for examination made on forms provided by the Board and accompanied by a fee, as well as NCARB verification, must be received and approved by the Board prior to a candidate scheduling any division of the examination. A candidate may begin testing only after the candidate receives written approval from the Board.

(a) The intent of the ARE is to evaluate an applicant's competence in the protection of public health, safety and welfare to provide the architectural services of building design and construction systems; building systems; construction documents and services; programming, planning and practice; schematic design; site planning and design; and structural systems. The subject of life safety is the basic purpose of the ARE and this subject permeates the entire examination; the subject of energy conservation is an economic and welfare issue and as a subject is considered through the syncretical process of developing architecture. The ARE content is based on the knowledge and skills required of a newly registered architect, practicing independently, to provide architectural services. The ARE evaluates an applicant's competence in the provision of architectural services to protect the public health, safety, and welfare.

(b) **Grades:** The Board adopts the grading procedures established by NCARB. NCARB's test result findings are binding. Candidates will have no opportunity to review or challenge test results.

(A) Periodically the ARE is updated with a newer version. When this occurs, there will be a conversion between older and newer versions, and candidates who have not completed the ARE in one version must complete appropriate transitions to be considered as passing the ARE.

(B) To protect an examinee's right to control the distribution of his or her scores, the Board will not divulge test results to others, except at the specific written request of the examinee.

(c) **Five-Year Rolling Clock:** All divisions of the ARE must be passed within a consecutive five-year period of time, referred to as the "five-year rolling clock", with specific criteria to follow:

(A) The five-year rolling clock period begins on the date when the first successfully passed division is administered, and all ARE divisions must be completed during the five-year period that follows.

(B) If a candidate does not successfully complete all divisions of the ARE within the five-year window, the passing scores of earlier divisions will expire.

(C) Once the grade for a division expires and is considered invalid, examinees may retake the invalid division as long as all ARE divisions are validly passed within a consecutive five-year window.

(D) Divisions of the ARE passed prior to January 1, 2006, will not have to be retaken to meet the five-year rolling clock requirements. The rolling clock applies only to divisions passed on or after January 1, 2006.

(d) **Retakes:** Examinees may schedule the examination divisions, in any order of administration and on a time schedule of the examinee's choice, by appointment with the test centers. Examinees have unlimited opportunities to re-take divisions, except that a failed division cannot be rescheduled within the six month period following the date that the failed division was administered.

(4) **Completing Registration:** Once the application materials have been evaluated and a candidate demonstrates they have met the education, IDP, and ARE requirements, the candidate will be invited to continue with the final steps to registration.

(5) **Jurisprudence Examination (JE):** After a candidate has successfully completed the ARE and IDP, the candidate must sit for and pass the Board's JE covering Oregon statutes and rules governing the practice of architecture.

(a) The JE will be administered in the same city and on the same day as regularly scheduled Board meetings.

(b) Candidates who pass the JE will appear before the Board for an oral interview on the same day.

(c) Candidates who do not pass the JE will not be allowed any opportunity to review or challenge test results and will be required to reschedule the JE no sooner than the next regularly scheduled board meeting date.

(d) The JE will be scheduled for 60 minutes in length and a passing score of 84 percent is the minimum acceptable passing score. The only items candidates may bring into the exam site and may have available to them during the JE are copies of the Oregon rules and laws.

(6) **Oral Interview:** Candidates who successfully pass the JE must appear before the Board for an oral interview. The oral interview is scheduled to follow the JE held on regularly scheduled Board meeting dates, and

ADMINISTRATIVE RULES

is an opportunity for registrants to meet the Board and discuss the rules and laws in effect in Oregon.

(7) **Registration:** Upon successful completion of the requirements of this section and upon payment of the registration fee, the Board may grant a certificate of registration.

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

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.050 & 671.060

Hist.: AE 5, f. 12-22-64; AE 6, f. 6-5-69; AE 11, f. 2-15-74, ef. 3-11-74; AE 1-1978, f. & ef. 1-23-78; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 1-1980, f. & ef. 2-14-80; AE 2-1980, f. & ef. 10-3-80; AE 2-1981(Temp), f. & ef. 7-28-81; AE 2-1983, f. & ef. 1-12-83; AE 2-1984, f. & ef. 10-23-84; AE 1-1986, f. 11-12-86, ef. 11-13-86; AE 2-1992, f. & cert. ef. 3-30-92; AE 5-1992(Temp), f. & cert. ef. 10-21-92; AE 1-1993, f. & cert. ef. 7-1-93; AE 1-1996, f. 1-23-96, f. 2-1-96; AE 2-1997, f. & cert. ef. 9-24-97; BAE 2-1998, f. & cert. ef. 6-22-98; Administrative correction, 6-17-99; BAE 3-2000, f. & cert. ef. 7-24-00; BAE 5-2001, f. & cert. ef. 10-24-01; BAE 5-2002, f. 8-14-02, cert. ef. 8-15-02; BAE 4-2003, f. 8-13-03, cert. ef. 8-14-03; BAE 2-2005, f. & cert. ef. 5-12-05; BAE 1-2008, f. & cert. ef. 2-28-08

806-010-0033

Recognized Jurisdictions

(1) The Oregon Board of Architect Examiners recognizes the following jurisdictions:

- (a) Each state of the United States;
- (b) The District of Columbia;
- (c) Guam;
- (d) Puerto Rico;
- (e) The Virgin Islands; and
- (f) Each province of Canada.

(2) The Oregon Board will consider applicants from other jurisdictions as being "foreign", and they must meet NCARB's evaluation standards before being considered for registration.

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.010, 671.020, 671.041 & 671.065

Hist.: BAE 4-2006, f. & cert. ef. 6-7-06; BAE 1-2008, f. & cert. ef. 2-28-08

806-010-0035

Reciprocal Registration Process

(1) Any registered or certified architect from another state or a territory, or Canadian Province who desires registration to practice in Oregon, must furnish an Oregon Board application and the applicant's Council Record from NCARB. In addition, the applicant must provide evidence for all of the following:

- (a) A first professional degree in architecture from a NAAB-accredited program of architecture;
- (b) Successfully passing the ARE;
- (c) If an architect has not been examined for seismic and lateral forces knowledge through successful completion of an NCARB examination in 1965 or later, the architect must then provide evidence of successfully completing the NCARB Division LF Lateral Forces examination;
- (d) Verification of completion of NCARB's IDP program or two years of consecutive and active practice in architecture in a Board-recognized jurisdiction after initial registration; and
- (e) The reciprocal application fee (See Schedule of Actual Fees, OAR 806-010-0105).

(2) **Jurisprudence Examination (JE):** After a candidate has completed the application process, the candidate must sit for and pass the Board's JE covering Oregon statutes and rules governing the practice of architecture.

(a) The JE will be administered in the same city and on the same day as regularly scheduled Board meetings.

(b) Candidates who pass the JE will appear before the Board for an oral interview on the same day.

(c) Candidates who do not pass the JE will not be allowed any opportunity to review or challenge test results and will be required to reschedule the JE no sooner than the next regularly scheduled board meeting date.

(d) The JE will be scheduled for 60 minutes in length, and a passing score of 84 percent is the minimum acceptable passing score. The only items candidates may bring into the exam site and may have available to them during the JE are copies of the Oregon rules and laws.

(3) **Oral Interview:** Prior to registration, Candidates who successfully pass the JE must appear before the Board for an oral interview. The oral interview is scheduled to follow the JE held on regularly scheduled Board meeting dates, and is an opportunity for registrants to meet the Board and discuss the rules and laws in effect in Oregon.

(4) **Registration:** Upon successful completion of the requirements of this section and upon payment of the registration fee, the Board may grant a certificate of registration.

(5) **Limits:**

(a) Reciprocity applicants may use the "Architect" title only under the conditions outlined in OAR 806-010-0037 and ORS 671.065.

(b) Reciprocity applicants may not practice architecture in Oregon until such time as registration is granted by the Oregon Board.

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.050 & 671.065

Hist.: AE 5, f. 12-22-64; AE 11, f. 2-15-74, ef. 3-11-74; AE 1-1978, f. & ef. 1-23-78; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 2-1980, f. & ef. 10-3-80; AE 1-1984, f. & ef. 8-22-84; AE 1-1987, f. & ef. 3-30-87; AE 1-1988, f. & cert. ef. 3-14-88; AE 1-1992, f. 1-9-92, cert. ef. 1-10-92; AE 3-1992, f. & cert. ef. 6-30-92; AE 1-1996, f. 1-23-96, cert. ef. 2-1-96; AE 2-1997, f. & cert. ef. 9-24-97; BAE 2-1998, f. & cert. ef. 6-22-98; BAE 1-1999, f. & cert. ef. 3-25-99; BAE 3-2000, f. & cert. ef. 7-24-00; BAE 5-2002, f. 8-14-02, cert. ef. 8-15-02; BAE 4-2003, f. 8-13-03, cert. ef. 8-14-03; BAE 2-2004, f. & cert. ef. 3-2-04; BAE 1-2008, f. & cert. ef. 2-28-08

Rule Caption: Renewals and CPE.

Adm. Order No.: BAE 2-2008

Filed with Sec. of State: 3-7-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 12-1-2007

Rules Amended: 806-010-0090, 806-010-0105, 806-010-0145

Subject: These rule amendments change the annual renewal cycle, transition to begin with the 2009 renewal, to a staggered two-year renewal cycle; with odd-numbered licenses to renew in odd-numbered years and even-numbered licenses to renew in even-numbered years. This allows all licenses to renew for a two-year period, while only half renew each year. In addition, this changes the type of continuing professional education allowed to only health, safety, and welfare subject matter, beginning with CPE acquired on and after July 1, 2008.

Rules Coordinator: Carol Halford—(503) 763-0662

806-010-0090

Renewal of Architect Registration

(1) Beginning with the 2009 renewal, Architect registration certificate numbers issued by this Board ending in even numbers will expire on June 30th of even-numbered years; and certificate numbers ending in odd-numbers will expire on June 30th of odd-numbered years. To renew, certificate holders must:

(a) Submit a current Board renewal form, fully completed and received in the Board office on or before July 1st of the year in which the license expires;

(b) Pay all required renewal fees, including any applicable late fees, specified in OAR 806-010-0015; and

(c) Provide any required evidence that the continuing professional education (CPE) requirements outline in OAR 806-010-0145 have been met.

(2) Registrants who fail to renew their registrations on or before July 1st of the year in which the registration expires (the renewal deadline) will be considered to be delinquent. Such a registrant may renew his or her certificate during the established grace periods by the Board's receipt of a complete renewal, as follows:

(a) Not later than July 31st of the year in which the registration expires, including payment of the renewal fee and any applicable late CPE reporting fee; or

(b) After July 31st, but before August 30th of the year in which the registration expires, including payment of the renewal fee, the late renewal fee, and any applicable late CPE reporting fee.

(3) On August 30th following the renewal deadline, the certificate of the architect who fails to pay the renewal fee, any applicable late renewal or late CPE reporting fees, or fails to provide a complete renewal application form to the Board office shall become inactive in Oregon. Reinstatement back to active status will be in accordance with the provisions of OAR 806-010-0060.

Stat. Auth.: ORS 670 & 671.125

Stats. Implemented: ORS 671.080

Hist.: AE 18(Temp), f. 10-4-77; AE 21, f. & ef. 12-20-77; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 3-1992, f. & cert. ef. 6-30-92; BAE 4-2002, f. & cert. ef. 8-7-02; BAE 1-2003, f. & cert. ef. 1-15-03; BAE 2-2008, f. 3-7-08, cert. ef. 7-1-08

806-010-0105

Schedule of Actual Fees

(1) Initial Registration:

- (a) One year or less — \$75;
- (b) More than one year to two years - \$150;

(2) Renewal:

- (a) One year or less — \$100;

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- (b) More than one year to two years — \$200;
- (c) Late Renewal — \$100;
- (d) Obtaining CPE after deadline, but during grace period — \$100;
- (3) Examination Application Fee — \$75;
- (4) Reciprocal Application Fee — \$100;
- (5) Duplicate Wallet Card Certificate — \$25;
- (6) Firm Registration — \$100;
- (7) Firm Renewal — \$100;
- (8) Reinstatement — \$300;
- (9) Miscellaneous:
 - (a) Labels, lists, or computer disk of licensees — \$50;
 - (b) Copying charges:
 - (A) The first 5 pages — free;
 - (B) Additional pages — \$0.25 per page.

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.085

Hist.: AE 3-1983, f. 1-12-83, ef. 3-1-83; AE 2-1984, f. & ef. 10-23-84; AE 1-1986, f. 11-12-86, ef. 11-13-86; AE 1-1988, f. & cert. ef. 3-14-88; AE 2-1988, f. & cert. ef. 9-9-88; AE 4-1992, f. & cert. ef. 9-2-92; AE 1-1996, f. 1-23-96, cert. ef. 2-1-96; AE 2-1997, f. & cert. ef. 9-24-97; BAE 2-1998, f. & cert. ef. 6-22-98; BAE 5-2001, f. & cert. ef. 10-24-01; BAE 2-2002, f. & cert. ef. 4-30-02; BAE 4-2002, f. & cert. ef. 8-7-02; BAE 1-2003, f. & cert. ef. 1-15-03; BAE 2-2008, f. 3-7-08, cert. ef. 7-1-08

806-010-0145

Continuing Professional Education

(1) **CPE Required to Practice:** In order to continue to practice architecture in Oregon, every person holding an active certificate of registration with this Board must submit a complete report of CPE as part of the renewal process as outlined in OAR 806-010-0090.

(2) **Purpose and Scope:** These rules provide for a CPE program to insure that all architects remain informed of those technical subjects necessary to safeguard the health, safety, and welfare of the public. These rules shall apply to all architect certificate holders in Oregon.

(3) **Requirements:** To renew or reinstate registration, in addition to other requirements, an architect must have acquired CPE for each renewal period since the architect's last renewal, or be exempt from these CPE requirements.

(a) Within a two-year renewal cycle, a minimum of 24 CPE hours must be acquired in subjects that relate to safeguarding the health, safety, and welfare of the public.

(b) If an architect exceeds the CPE requirement in a renewal period, the architect may carry a maximum of 12 CPE hours forward into the next renewal period.

(c) Failure to comply with these requirements may result in non-renewal of the architect's registration, other disciplinary action, or both.

(4) **Initial Registration, Reissued Certificates, and during the Transition to two-year renewal cycles:** Registrants who receive an initial or reissued certificate to practice architecture in Oregon will comply with the CPE requirements on a pro-rated basis, calculated at one CPE hour per month, including the month of issuance or reissuance, until June 30th of the renewal cycle end.

(5) Reporting and Record Keeping:

(a) A registered architect shall complete and submit forms approved by the board certifying to the architect's having acquired the required CPE hours;

(b) An architect's submission may be selected for review by the board for verification of compliance with these requirements. Evidence of compliance shall be maintained by the architect for one renewal cycle beyond the period for which the form was submitted. If selected for the CPE review by the Board, the applicant must provide such evidence to verify attendance at reported CPE activities;

(c) If the board disallows any CPE hours, the architect shall have six months from notice of disallowance to make up the deficiency by acquiring the required number of CPE hours and reporting evidence of the completion of such hours to the Board. Such CPE hours shall not again be used for any subsequent renewal. No such allowance will be made if the board finds following notice and hearing that the architect willfully disregarded these requirements;

(d) Acceptable CPE activities will be reported in a minimum of one hour segments. One CPE hour will represent a minimum of 50 minutes of actual course time. No credit will be allowed for introductory remarks, meals, breaks, or administration matters related to courses of study;

(e) Failure to fulfill the CPE requirements and/or file the required renewal report, properly and completely, including all required signatures and fees, shall result in non-renewal of an architect's certificate of registration or disciplinary action, or both, unless a complete renewal has been

received by the Board prior to the deadline and the minimum CPE requirements have been met.

(f) In addition to allowed carryover hours, CPE must be acquired during the renewal cycle outlined in OAR 806-010-0090.

(g) Any false statements or misrepresentations with respect to course attendance or any other aspect of continuing professional educational activity shall subject the architect to license revocation or other disciplinary action.

(h) CPE hours may be reported on a current Board renewal form or by submitting a transcript from the American Institute of Architects, Continuing Education Program, that document CPE credits were earned by the architect during the renewal period.

(6) **Activities:** The following suggested list may be used by all registrants in determining the types of activities, which may fulfill CPE requirements. (Refer to section (5) for reporting and record keeping procedures.)

(a) CPE hours in attendance at short courses or seminars, in HSW subjects related to the practice of architecture and sponsored by colleges or universities.

(b) CPE hours in attendance at technical presentations in HSW subjects related to the practice of architecture which are held in conjunction with conventions or at seminars related to materials use and function. Such presentations as those sponsored by the American Institute of Architects, Construction Specifications Institute, Construction Products Manufacturers Council or similar professional organizations.

(c) CPE hours acquired in structured self-study courses such as those sponsored by NCARB, AIA, or similar organizations, and dealing with HSW subjects related to the practice of architecture.

(d) A maximum of three CPE hours may be claimed as preparation time for each class hour spent teaching architectural courses or seminars in HSW subjects. College or University faculty may not claim CPE hours for teaching regular curriculum courses.

(e) CPE hours spent in architectural research in HSW subjects and has been published or formally presented to the profession or public.

(f) Reading designated articles or completing structured coursework in HSW subjects found in architectural journals or on web sites and receiving a certificate of completion issued by the provider. The professional journal articles dated before two years prior to the date of testing will not be allowed as acceptable CPE.

(g) Taking and passing college or university credit courses in HSW subject matter and dealing with architectural subjects. Each semester hour of credit awarded by the college or university each term will equal 15 CPE hours. Each quarter hour of credit awarded by the college or university each term will equal 10 CPE hours;

(h) CPE hours spent in professional service to the public which draws upon the registrant's professional expertise on boards and commissions that are charged with the protection of the health, safety, and welfare of the public, such as: serving on councils or commissions, planning commissions, building code advisory boards, budget committees, parks commissions, or urban renewal boards or committees;

(7) **Activities Not Allowed:** The purpose of the CPE requirement for license renewal in Oregon is to require architects to obtain regular and continual education in subjects that relate to the health, safety, and welfare of the public during the course of their professional life. As such, the following CPE hours are not allowed:

(a) Time spent on the same CPE, even if obtained on different dates, may be used only once during a renewal period to meet the renewal/CPE requirements.

(b) Time spent in unstructured programs or self-directed study.

(c) Time spent on architectural educational tours of cities, buildings, or public places, unless there is a significant HSW component to the tour curriculum.

(d) Time spent as a mentor for a person enrolled in the IDP program.

(e) Time spent in any teaching program sharing professional skills, such as the Architects in Schools (AIS) program.

(8) **Exemptions:** A registered architect may be exempt from Oregon's CPE requirements if the architect submits acceptable documentation that for not less than 18 months of the current renewal cycle the architect has met one of the following exemption criteria:

(a) Has served honorably on active duty in the military service;

(b) During the full period covered by this Board's renewal, the architect was actively registered as an architect in another Board-recognized jurisdiction that has a mandatory CPE requirement for renewal of an architect's registration;

(c) Special Exemption — The board shall have authority to make exceptions for reasons of individual hardship, including health (certified by

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a medical doctor) or other good cause. The architect must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board.

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

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.125 & 671.080

Hist.: BAE 1-2000, f. & cert. ef. 2-23-00; BAE 2-2000, f. & cert. ef. 7-24-00; BAE 3-2001, f. & cert. ef. 10-4-01; BAE 3-2002, f. 7-10-02 cert. ef. 7-15-02; BAE 4-2002, f. & cert. ef. 8-7-02; BAE 1-2003, f. & cert. ef. 1-15-03; BAE 5-2004, f. & cert. ef. 5-5-04; BAE 7-2006, f. & cert. ef. 12-13-06; BAE 2-2008, f. 3-7-08, cert. ef. 7-1-08

Board of Examiners for Engineering and Land Surveying Chapter 820

Rule Caption: Adopt and revise language in rules related to professional licensure under the OSBEELS authority.

Adm. Order No.: BEELS 1-2008

Filed with Sec. of State: 3-12-2008

Certified to be Effective: 3-12-08

Notice Publication Date: 2-1-2008

Rules Adopted: 820-010-0236

Rules Amended: 820-010-0300, 820-010-0305, 820-010-0325, 820-010-0415, 820-010-0425, 820-010-0427, 820-010-0450, 820-010-0605

Subject: OAR 820-010-0236 — Defines the information to be furnished in an application for individuals seeking registration as a Registered Professional Photogrammetrist.

OAR 820-010-0300 — Clarifies the current policy related to fees paid for the rescore of an examination.

OAR 820-010-0305 — Revises fees charged by the board for wall certificates, applications for registration, temporary permits to practice professional engineering and professional photogrammetric mapping, renewal fees for active certificates and inactive registrations, and fees for reinstatement and two-year license for inactive and retired registrants.

OAR 820-010-0325 — Revises the budget of the board for the 2007-2009 biennium.

OAR 820-010-0415 — Includes a requirement to pass a take-home examination on the laws and rules in the State of Oregon for individuals seeking registration as a professional engineer by examination.

OAR 820-010-0425 — Includes a requirement to pass a take-home examination on the laws and rules in the State of Oregon for individuals seeking registration as a professional land surveyor by examination.

OAR 820-010-0427 — Includes a requirement to pass a take-home examination on the laws and rules in the State of Oregon for individuals seeking registration as a registered professional photogrammetrists by examination.

OAR 820-010-0450 — Includes the Naval Architecture/Marine Engineering and Geotechnical Engineering disciplines to the list of branches examined and licenses issued by the board.

OAR 820-010-0605 — Includes the requirement for a registrant to inform the board of an e-mail address.

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

820-010-0236

Information to be Furnished by Registered Professional Photogrammetrist Applicants

(1) Applicants for admission to examination for registration as registered professional photogrammetrists will be required to submit evidence to show qualification of eligibility consisting of current enrollment as an LSI, meeting the requirements of the State of Oregon at the time of enrollment and the following practice experience: Applicants qualified under OAR 820-010-0226(3) shall complete four or more years of active practice in photogrammetric work in addition to the requirements for admission to examination for enrollment as an LSI. Applicants will be allowed to submit as qualifying work experience that work experience obtained based on employment up to the date of the professional photogrammetry examination;

(2) Active practice in photogrammetric work shall be under the supervision and control of a licensed photogrammetrist or licensed land surveyor or be active practice in photogrammetric work satisfactory to the Board.

(3) Graduation from a post-baccalaureate degree program in engineering or surveying at a college or university which has an ABET accredited undergraduate degree program in the same field as the post-baccalaureate degree program may be substituted for one year of the four years of active practice required by this rule so long as the degree was not the basis for admission to the fundamental examination under OAR 820-010-0226(3)(g).

(4) Experience as a full-time assistant professor, or above, in a Board approved photogrammetric curriculum, may be considered at the discretion of the Board as qualifying experience.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 1-2008, f. & cert. ef. 3-12-08

820-010-0300

Refunds and Charges

(1) Application fees are non-refundable.

(2) Refunds of application fees will not be made to individuals who fail to complete the application process, to qualify for, withdraw from, or do not appear for, the examination.

(3) Comity application fees will not be refunded, but may be applied toward examination fee if requested by the applicant and the application has not been denied.

(4) Rescore fees are non-refundable.

(5) If the Board receives payment of any fees by check and the check is deposited and returned to the Board, the payor of the fees will be assessed a charge of \$20 in addition to the required payment of the fees.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 2-1985, f. 12-4-85, ef. 12-16-85; BEELS 2-2004, f. & cert. ef. 7-14-04; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 1-2008, f. & cert. ef. 3-12-08

820-010-0305

Fees

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

(a) Fee for application.

(b) Fee for initial activation equal to one year renewal (one time fee applies to PE, PLS, RPP, and CWRE only; not applicable to reexamination).

(c) Fee for issuance of first certificate (one time fee applies to PE, PLS, RPP, and CWRE only).

(2) Fees for examination application:

(a) Initial fundamentals of engineering examination application — \$35.

(b) Initial fundamentals of land surveying examination application — \$35.

(c) Initial professional engineering (PE) examination application — \$100.

(d) Initial professional geotechnical examination application — \$375.

(e) Initial professional structural engineering examination application — \$575.

(f) Initial professional land surveying examination application — \$140.

(g) Initial professional photogrammetric mapping examination application — \$120.

(h) Certified Water Right Examiner test application — \$50.

(i) Fundamentals of engineering examination re-application — \$25.

(j) Fundamentals of land surveying examination re-application — \$25.

(k) Professional engineering (PE) examination re-application — \$90.

(l) Professional geotechnical examination re-application — \$365.

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(m) Professional structural engineering examination re-application — \$565.

(n) National portion of professional structural engineering examination re-application — \$85.

(o) Oregon requirement of professional structural engineering examination re-application — \$480.

(p) Professional land surveying (PLS) examination re-application — \$130.

(q) Oregon law portion of PLS examination re-application — \$55.

(r) National portion of PLS examination re-application — \$75.

(s) Professional photogrammetric examination re-application — \$110.

(t) Certified Water Rights Examiner test re-application — \$40.

(u) Proctor Request — \$100.

(3) Fees for certification, registration, and renewal:

(a) Professional wall certificate — \$35.

(b) Application for registration as a professional engineer — \$250.

(c) Application for registration as a professional land surveyor — \$250.

(d) Application for registration as a registered professional photogrammetrist — \$250.

(e) Temporary permit issued under ORS 672.109 and 672.127 — \$100.

(f) Re-issuance of lost or mutilated pocket card — \$10.

(g) Issuance of certificate without examination based on experience as provided under ORS 672.255 — \$250.

(h) Re-score of an Oregon specific examination — \$50.

(i) Annual renewal of a professional engineering certificate — \$90.

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

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

(l) Annual renewal of inactive registration — \$45.

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

(n) Fee for reinstatement and two-year license for inactive registrant — \$225.

(o) Fee for reinstatement and two-year license for retired registrant — \$225.

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

(q) Verification of exam/licensure — \$15.

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

Stats. Implemented: ORS 672.002 - 672.325

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

820-010-0325

Budget

The amount of \$2,300,000 is established for the biennium beginning July 1, 2007, as the intended limit for payment of expenses from fees, moneys or other revenue, including Miscellaneous Receipts, collected or received by the Board.

Stat. Auth.: ORS 670.310, 672.155 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 1-1999, f. 5-27-99, cert. ef. 7-1-99; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 2-2002, f. & cert. ef. 5-15-02; BEELS 4-2003, f. 5-14-03, cert. ef. 7-1-03; BEELS 2-2004, f. & cert. ef. 7-14-04; BEELS 2-2005(Temp), f. & cert. ef. 6-9-05 thru 12-5-05; BEELS 4-2005, f. & cert. ef. 9-23-05; BEELS 1-2007(Temp), f. & cert. ef. 3-23-07 thru 6-30-07; Administrative correction, 7-15-07; BEELS 1-2008, f. & cert. ef. 3-12-08

820-010-0415

Nature of the Examination for Professional Engineer (PE)

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

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

(b) A written examination in a professional branch of engineering, other than structural engineering, covering practical engineering problems in branches listed in OAR 820-010-0450.

(2) The uniform, national examinations are written and scored by the NCEES and administered by ELSSES. Acoustical examinations are written, scored and administered by the Board. Forest examinations are written and scored by the Washington State Board of Registration for Professional Engineers and Land Surveyors (Washington Board) and the Oregon Board pursuant to a Memorandum of Understanding entered into between the Washington Board and the Oregon Board. The Oregon Board administers the forest examination in Oregon.

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

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 20, f. & ef. 12-15-77; EE 2, f. 12-4-85, ef. 12-16-85; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 1-2008, f. & cert. ef. 3-12-08

820-010-0425

Nature of Examination for Professional Land Surveyor (PLS)

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

(a) A written examination in land surveying fundamentals as covered in OAR 820-010-0430 unless exempted for this examination under OAR 820-010-0455. Such examination may be taken at any scheduled period but must be passed in order to be admitted to the examination in subsection (1)(b) of this rule;

(b) A written examination in practical land surveying problems; and

(c) A four-hour Oregon specific examination covering the U. S. Public Land Survey system, Oregon laws relating to land surveying, and other matters.

(2) The uniform, national examinations referenced in sections (1)(a) and (1)(b) are written and scored by the NCEES and administered by ELSSES. The four-hour Oregon specific examination is written, scored and administered by the Board.

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

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 20, f. & ef. 12-15-77; EE 2, f. 12-4-85, ef. 12-16-85; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 1-2008, f. & cert. ef. 3-12-08

820-010-0427

Nature of Examination for Registered Professional Photogrammetrist (RPP)

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

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

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

(2) The land surveying fundamentals examination is written and scored by NCEES and administered by ELSSES. The practical photogrammetric mapping problems examination is written, scored and administered by the Board.

(3) At the discretion of the Board, any applicant may be requested to appear for an oral interview before the Board or any member thereof. Such interview is to be for the purpose of reviewing the applicant's educational background, experience record, or examination, or to review examples of the applicant's work, or to assist the Board in determining that the applicant fully meets the required qualifications.

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

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

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

820-010-0450

Branches Examined by Board

The Board will conduct examinations and issue licenses in accordance with the following:

ADMINISTRATIVE RULES

(1) Examinations will be offered annually and successful examinees will be licensed as professional engineers especially qualified in one of the branches listed below. The applicant will be limited to the selection of examination questions pertaining to that branch:

- (a) Acoustical;
- (b) Agricultural;
- (c) Chemical;
- (d) Civil;
- (e) Control Systems;
- (f) Electrical;
- (g) Environmental;
- (h) Fire Protection;
- (i) Forest;
- (j) Geotechnical
- (k) Industrial;
- (l) Mechanical;
- (m) Metallurgical;
- (n) Naval Architecture/Marine;
- (o) Nuclear;
- (p) Structural.

(2) Persons desiring to be licensed as a professional engineer naming a branch other than one listed under section (1) of this rule as one in which the individual is especially qualified may petition the Board to amend the list. Procedures are designated in the Model Rules of Procedure under the Administrative Procedure Act, OAR 137-001-0070. Information in the petition shall include:

- (a) The public need for recognition of the new discipline;
- (b) The number of potential licensees that would be affected;
- (c) Whether the new branch is a specialty under an already recognized discipline; and
- (d) Recommendations for examination sources in that discipline.

(3) The Board may, at its option, discontinue examining and licensing in any branch at any time that it receives fewer than six qualified applicants in that branch in a three-year period.

(4) For a license as a professional land surveyor the applicant will be examined in land surveying.

(5) For a license as a professional photogrammetrist the applicant will be examined in photogrammetry.

(6) For certification as a water right examiner, the applicant will be examined on water right applications and the preparation of claims of beneficial use.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 2-1978, f. 12-21-78, ef. 1-1-79; EE 1-1981, f. 5-19-81, ef. 6-1-81; EE 1-1984, f. & ef. 3-6-84; EE 2-1986, f. 3-26-86, ef. 3-31-86; EE 4-1987, f. & ef. 12-1-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 3-1992, f. 3-19-92, cert. ef. 4-1-92; EE 5-1993, f. 8-3-93, cert. ef. 8-13-93; BEELS 5-2000, f. & cert. ef. 10-19-00; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 1-2004, f. & cert. ef. 1-26-04; BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 1-2008, f. & cert. ef. 3-12-08

820-010-0605

Address Changes; Service of Notice

It is the registrant's responsibility to inform the Board in writing, within 30-days, of any address change, including any change of an e-mail address. Notice by registered or certified mail to the registrant's last address on file with the Board shall constitute service.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 2-1980, f. & ef. 5-14-80; EE 1-1992, f. & cert. ef. 2-3-92; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 1-2008, f. & cert. ef. 3-12-08

Board of Naturopathic Examiners

Chapter 850

Rule Caption: Updates the formulary compendium.

Adm. Order No.: BNE 1-2008

Filed with Sec. of State: 2-19-2008

Certified to be Effective: 2-19-08

Notice Publication Date: 1-1-2008

Rules Amended: 850-060-0225, 850-060-0226

Subject: Updates the Formulary Compendium for Naturopathic physicians and Pharmacists.

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;
- (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) Aminosalicic 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-Fuchsin;
- (61) Captopril;
- (62) Cefaclor;
- (63) Cefdinir;
- (64) Cefibuten;
- (65) Cefadroxil;
- (66) Cefditoren;
- (67) Cefixime;
- (68) Cefonicid Sodium;

ADMINISTRATIVE RULES

- (69) Cefpodoxime Proxetil;
(70) Cefprozil;
(71) Cefibuten;
(72) Cefuroxime;
(73) Celecoxib;
(74) Cellulose Sodium Phosphate;
(75) Cenetin;
(76) Cephalexin;
(77) Cephadrine;
(78) Chirocaine*;
(79) Chloramphenicol;
(80) Chloroquine;
(81) Citrate Salts;
(82) Clarithromycin;
(83) Clindamycin;
(84) Clioquinol;
(85) Clostridium botulinum toxin (ab);
(86) Cloxacillin;
(87) Codeine;
(88) Colchicine;
(89) Colistimethate;
(90) Collagenase;
(91) Condylox;
(92) Cortisone;
(93) Coumadin;
(94) Cromolyn Sodium;
(95) Cyanocobalamin;
(96) Cycloserine;
(97) 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;
(155) Fluoroquinolines;
(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;

ADMINISTRATIVE RULES

- (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) Methylergonovine;
(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;
(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) Spironolactone;
(328) Stavudine;
(329) Spectinomycin;
(330) Sucralfate;
(331) Sulfasalazine;
(332) Sulfonamide/Trimethoprim/Sulfones;
(333) Tazarotene topical gel;
(334) Tacrolimus;
(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) Tretinoin;
(352) Triamcinolone;
(353) Triamterene;
(354) Trichloroacetic Acid*;
(355) Trimetazidine;
(356) Trioxsalen;
(357) Triptans;
(358) Troleandomycin;
(359) Undecylenic Acid;
(360) Urea;
(361) Urised;
(362) Ursodiol;
(363) Valacyclovir;
(364) Valproic Acid;

ADMINISTRATIVE RULES

- (365) Vancomycin;
 - (366) Verapamil;
 - (367) Verdenafil HCL;
 - (368) Vidarabine;
 - (369) Vitamins (Oral & Injectable);
 - (370) Yohimbine;
 - (371) Zalcitabine;
 - (372) Zidovudine;
 - (373) Zolpidem;
 - (374) 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*.
 - (364) 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*;
 - (365) SkinTests:
 - (a) Diphtheria*;
 - (b) Mumps*;
 - (c) Tuberculin*.
- Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 681.145
Hist.: NE 2-1990, f. & cert. ef. 11-8-90; NE 1-1997, f. 10-13-97, cert. ef. 10-20-97; BNE 1-1999, f. 6-24-99, cert. ef. 6-25-99; BNE 1-2000, f. & cert. ef. 1-10-00; BNE 3-2000, f. & cert. ef. 8-16-00; BNE 2-2001, f. & cert. ef. 2-7-01; BNE 4-2001, f. & cert. ef. 5-25-01; BNE 8-2001, f. & cert. ef. 12-7-01; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; BNE 3-2005, f. & cert. ef. 2-4-05; BNE 5-2005, f. & cert. ef. 6-10-05; Renumbered from 850-010-0225, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 9-2005, f. & cert. ef. 12-12-05; BNE 4-2006, f. & cert. ef. 12-11-06; BNE 3-2007, f. & cert. ef. 6-12-07; BNE 1-2008, f. & cert. ef. 2-19-08

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;†
 - (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) Cephadrine;†
 - (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;

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- (E) Nystatin;†
- (d) Antimycobacterials;†
- (A) Aminosalicilylic Acid;†
- (B) Cycloserine;†
- (C) Pyrazinamide;†
- (D) Rifabutin;†
- (E) Rifampin;
- (e) Antivirals;
- (A) Interferon**;†
- (B) Nucleoside/nucleotide analogs**;
- (i) Abacavir;†
- (ii) Acyclovir;
- (iii) Didanosine;†
- (iv) Emtricitabine;†
- (v) Famciclovir;
- (vi) Ganciclovir;
- (vii) Lamivudine;
- (viii) Penciclovir;
- (ix) Stavudine;
- (x) Tenofovir;†
- (xi) Valacyclovir;
- (xii) Viarabine;
- (xiii) Zalcitabine;†
- (xiv) Zidovudine;
- (f) Antiprotozoal;
- (A) Iodoquinol;
- (B) Metronidazole;
- (C) Quinines;†
- (i) Chloroquine;
- (ii) Hydroxychloroquine;
- (iii) Mefloquine;†
- (iv) Quinine Sulfate;†
- (g) Misc;
- (A) Immune Globulins* **;
- (B) Lindane;†
- (C) Permethrin;
- (D) Pyrethrins;
- (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;†
- (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;†

ADMINISTRATIVE RULES

- (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 Citrate;
- (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;†
- (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 850-060-0225 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) Estropiate;
- (e) Pituitary;
- (A) Desmopressin;
- (B) Human Growth Hormone;
- (C) Oxytocin;
- (f) Progestins;
- (A) Medroxyprogesterone;†

ADMINISTRATIVE RULES

(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) Clioquinol;†
(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;
(g) Nedocromil;†
(h) Xanthines**;
(A) Aminophylline;
(B) Diphylline;
(C) Oxitriphylline;†
(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) 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

Board of Nursing
Chapter 851

Rule Caption: Advanced Practice Formulary Updated.
Adm. Order No.: BN 1-2008
Filed with Sec. of State: 2-25-2008
Certified to be Effective: 2-25-08
Notice Publication Date: 1-1-2008

ADMINISTRATIVE RULES

Rules Amended: 851-056-0012

Subject: The Board is authorized by ORS 678.385 and 678.390 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner or a clinical nurse specialist under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. This amendment adds the November and December 2007 and January 2008 updates to Drug Facts and Comparisons to the formulary, with specific drugs proposed for inclusion or deletion.

Rules Coordinator: KC Cotton—(971) 673-0638

851-056-0012

Formulary for Clinical Nurse Specialists and Nurse Practitioners with Prescriptive Authority

(1) The following definitions apply for the purpose of these rules:

(a) "Appliance or device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory which is required under federal or state law to be prescribed by a practitioner and dispensed by a pharmacist.

(b) "Formulary" means a specific list of drugs determined by the Board. The formulary for nurses with prescriptive authority shall be all the drugs in the *Drug Facts and Comparisons* dated February 2008, with the exception of certain drugs and drug groups which are listed below.

(c) "Board" means the Oregon State Board of Nursing.

(2) The Board as authorized by ORS 678.385 shall determine the drugs which clinical nurse specialists and nurse practitioners with prescriptive authority may prescribe, shall periodically revise the formulary by rulemaking hearing at each regular Board meeting, and shall transmit the list of those drugs which are exceptions to the formulary, and which may not be prescribed to nurses with prescriptive authority and other interested parties.

(3) The formulary is constructed based on the following premises:

(a) Nurse practitioners may provide care for specialized client populations within each nurse practitioner category/scope of practice;

(b) Clinical nurse specialists may provide care for individuals and populations within their specialty scope of practice;

(c) Prescribing is limited by the individual's scope of practice and knowledge base within that scope of practice;

(d) Clinical nurse specialists and nurse practitioners may prescribe the drugs appropriate for patients within their scope of practice as defined by OAR 851-050-0005; or 851-054-0020 and 0021;

(e) Clinical nurse specialists and nurse practitioners shall be held strictly accountable for their prescribing decisions;

(f) All drugs on the formulary shall have Food and Drug Administration (FDA) approval.

(4) Clinical nurse specialists and nurse practitioners with prescriptive authority are authorized to prescribe:

(a) All over-the-counter drugs;

(b) Appliances and devices.

(5) Clinical nurse specialists and nurse practitioners are authorized to prescribe the following drugs as listed in *Drug Facts and Comparisons* dated February 2008:

(a) Nutrients and Nutritional Agents — all drugs except Flavocoxid (Limbrel);

(b) Hematological Agents — all drugs except Drotrecogin Alfa (Xigris); and Trepstinil Sodium (Romodulin).

(c) Endocrine and Metabolic Agents — all drugs except:

(A) I 131;

(B) Gallium Nitrate; and

(C) Mifepristone (Mifeprex); and

(D) Abarelix (Plenaxis).

(d) Cardiovasculars — all drugs except:

(A) Cardioplegic Solution;

(B) Fenoldopam Mesylate (Corlopam); and

(C) Dofetilide (Tikosyn).

(e) Renal and Genitourinary Agents — all drugs;

(f) Respiratory Agents — all drugs;

(g) Central Nervous System Agents — all drugs with the following provisions:

(A) Class II Controlled Substances — Only the following drugs:

(i) Tincture of opium;

(ii) Codeine;

(iii) Hydromorphone;

(iv) Morphine;

(v) Oxycodone, Oxymorphone;

(vi) Topical Cocaine Extracts and Compounds;

(vii) Fentanyl;

(viii) Meperidine;

(ix) Amphetamines;

(x) Methylphenidates;

(xi) Pentobarbital;

(xii) Secobarbital;

(xiii) Methadone Hydrochloride (in accordance with OAR 851-045-0015(2)(n) and 851-056-0026; and

(xiv) Levorphanol.

(B) General Anesthetic Agents — no drugs which are general anesthetic barbiturates, volatile liquids or gases, with the exception of nitrous oxide.

(C) Chymopapain is excluded.

(D) Ziconotide (Prialt) is excluded.

(h) Gastrointestinal Agents — all drugs except: Monoctanoin;

(i) Anti-infectives, Systemic — all drugs;

(j) Biological and Immunologic Agents — all drugs except Basiliximab (Simulect);

(k) Dermatological Agents — all drugs except Psoralens;

(l) Ophthalmic and Otic Agents — all drugs except:

(A) Punctal plugs;

(B) Collagen Implants;

(C) Indocyanine Green;

(D) Hydroxypropal (Methyl) Cellulose;

(E) Polydimethylsiloxane;

(F) Fomivirsin Sodium (Vitravene);

(G) Verteporfin;

(H) Levobetaxolol HCL (Betaxon);

(I) Travoprost (Travatan);

(J) Bimatoprost (Lumigan);

(K) Unoprostone Isopropyl (Rescula);

(L) Pegaptanib Sodium (Macugen);

(M) Triptan Blue (VisionBlue);

(N) Retisert; and

(O) Ranibizumab (Lucentis).

(m) Antineoplastic Agents — all drugs except:

(A) NCI Investigational Agents;

(B) Samarium Sm53;

(C) Denileukin Diftitox (Ontak);

(D) BCG, Intravesical (Pacis);

(E) Arsenic Trioxide (Trisenox);

(F) Ibritumomab Tiuxetan (Zevalin);

(G) Tositumomab and Iodine 131 I-Tositumomab (Bexxar);

(H) Sclerosol; and

(I) Clofarabine (Clolar).

(n) Diagnostic Aids:

(A) All drugs except Arbutamine (GenESA);

(B) Thyrotropin Alfa (Thyrogen);

(C) Miscellaneous Radiopaque agents — no drugs from this category

except:

(i) Iopamidol;

(ii) Iohexol; and

(iii) Ioxilan (Oxilan).

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

Stat. Auth.: ORS 678.385

Stats. Implemented: ORS 678.385, 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 2-2007, f. & cert. ef. 3-13-07; BN 4-2007, f. & cert. ef. 5-2-07; BN 6-2007, f. & cert. ef. 6-26-07; BN 9-2007, f. & cert. ef. 10-1-07; BN 12-2007, f. & cert. ef. 11-21-07; BN 1-2008, f. & cert. ef. 2-25-08

Rule Caption: Rules Revised to Allow Development of an On-line Nursing Assistant Training Program.

Adm. Order No.: BN 2-2008

Filed with Sec. of State: 2-25-2008

Certified to be Effective: 2-25-08

Notice Publication Date: 1-1-2008

Rules Amended: 851-061-0020, 851-061-0030, 851-061-0080, 851-061-0090, 851-061-0120

Subject: These rules cover the standards for training programs for Nursing Assistants and Medication Aides. These amendments address the current very specific "classroom" requirements and add standards related specifically for on-line programs.

Rules Coordinator: KC Cotton—(971) 673-0638

ADMINISTRATIVE RULES

851-061-0020

Definitions

As used in these rules:

(1) "Board-approved Curriculum" means content required in nursing assistant and medication aide training programs established by Board policy.

(2) "Certified Medication Aide (CMA)" means a Certified Nursing Assistant who has had additional training in administration of noninjectable medication and holds a current unencumbered Oregon CMA certificate.

(3) "Certified Nursing Assistant (CNA)" means a person who holds a current Oregon CNA certificate by meeting the requirements specified in these rules; whose name is listed on the CNA Registry; and who assists licensed nursing personnel in the provision of nursing care. The phrase Certified Nursing Assistant and the acronym CNA are generic and may refer to CNA 1, CNA 2 or all CNAs.

(4) "Certified Nursing Assistant 1 (CNA 1)" means a person who holds a current Oregon CNA certificate and who assists licensed nursing personnel in the provision of nursing care.

(5) "Certified Nursing Assistant 2 (CNA 2)" means a CNA 1 who has met requirements specified in these rules for one or more of the CNA 2 categories.

(6) "Client" means the individual who is provided care by the CNA or CMA including a person who may be referred to as "patient" or "resident" in some settings.

(7) "Clinical Instructor" means a registered nurse whose role is education of students in the skills laboratory or clinical site and who may participate in classroom teaching under the direction of the program director or primary instructor.

(8) "Clinical Preceptor" means a licensed nurse who provides direct clinical supervision of students during their clinical experience under the direction of the program director or a primary instructor.

(9) "Clinical Site" is a location or situation in which hands on experience with actual clients is obtained.

(10) "CNA Registry" means the listing of Oregon Certified Nursing Assistants maintained by the Board.

(11) "Competency evaluation" means the Board approved process for determining competency.

(12) "Criminal History Check" means the Oregon Criminal History Check and when required, a National Criminal History Check and/or a State-Specific Criminal History Check, and processes and procedures equivalent to the Department of Human Services (DHS) rules.

(13) "Direct supervision" means that the registered nurse, clinical nurse specialist, or nurse practitioner is physically present and accessible in the immediate client care area and is available to intervene if necessary.

(14) "Facility-Based Program" means an approved nursing assistant or medication aide training program in a licensed nursing facility.

(15) "Full-time" means at least 32 hours of regularly scheduled work each week.

(16) "Independent Training Program" means an approved nursing assistant or medication aide training program that is not a facility-based program.

(17) "Instructor-directed" means an on-line training that is managed, directed, and facilitated through interaction between learners and identified instructor(s). Learning activities may occur through either synchronous or asynchronous interaction between instructor and students and among students.

(18) "Level 1 training" is the minimum training required to prepare a graduate to take the state certification examination for CNA 1.

(19) "Level 2 training" is training available to a CNA 1 to prepare them for a role in one or more of the Board approved category areas.

(20) "Licensed Nursing Facility" means a licensed nursing home or a Medicare or Medicaid certified long term care facility.

(21) "Medication Pass" means the time spent and the process of preparing and administering time scheduled medications to a group or groups of clients and documenting the medication administration.

(22) "Nursing Assistant" means a person who assists licensed nursing personnel in the provision of nursing care. ORS 678.440(4)

(23) "On-line program" means an interactive computer based nursing assistant training program that provides at least the equivalent of 51 classroom hours and at least 24 laboratory hours and 75 clinical hours under the supervision of a Board approved instructor/preceptor.

(24) "On-line program provider" means a provider that has a proven track record of successfully providing professional development, training and educational programs in both classroom and on-line environments in

Oregon, either directly or in partnership, in the previous 24 months of application, and meets all Board requirements.

(25) "Program" means a training program that prepares graduates for certification as a nursing assistant level 1, level 2, or medication aide. The terms "nursing assistant program," or "medication aide program" as used in these rules, are synonymous with "Program."

(26) "Representative of the Board" means the Nursing Assistant Program Consultant or Board designee qualified to perform the necessary responsibilities.

(27) "Self-directed" means an on-line program in which course materials, learning activities, communications, and assessment activities are delivered and completed electronically. Learners engage in and complete activities at their own pace.

(28) "Self-Evaluation" means a review of a basic nursing assistant or medication aide training program conducted by the program director using forms provided by the Board and submitted to the Board.

(29) "Site Visit" means that representative(s) of the Board go to the location of a program for specified purpose(s) which may include a survey for approval.

(30) "Standards for Approval" means authoritative statements which set expectations for a program to achieve and maintain approval status. (OAR 851-061-0080 through 0130).

(31) "Survey Visit" means that representative(s) of the Board go to the location of a program to review the program for compliance with Standards for Approval, and to prepare a report and recommendation regarding approval status.

(32) "Waiver of Prohibition" authorizes a program to be taught in but not by a facility that has had its approval denied or withdrawn pursuant to OAR 851-061-0050(2).

Stat. Auth.: ORS 678.440, 678.442 & 678.444

Stats. Implemented: ORS 678.440, 678.442 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2004,

f. & cert. ef. 7-13-04; BN 2-2008, f. & cert. ef. 2-25-08

851-061-0030

Process for Program Approval

(1) Nursing assistant or medication aide training programs shall be Board-approved prior to being offered. Retroactive approval shall not be granted.

(2) Application for Initial Approval of level 1, level 2, and medication aide training programs. A facility, agency, on-line program provider, or individual wishing to establish a new nursing assistant or medication aide training program shall make application to the Board at least 45 days in advance of expected start date. The application for initial approval of a training program shall include:

- (a) A completed form provided by the Board;
- (b) Appropriate fees;
- (c) Faculty names and qualifications;
- (d) Names of classroom and clinical facilities;
- (e) Name of person authorized to accept service of notices issued by the Board;

- (f) Program rationale, philosophy and purpose;
- (g) Program outline:
 - (A) Objectives;
 - (B) Curriculum content divided into number and sequence of didactic and clinical hours; and
 - (C) Teaching methodology.
- (h) Evaluation method:
 - (A) Laboratory and clinical skills checklist approved by the Board;
 - (B) Final exam; and
 - (C) In addition, for level 2 training programs, a Board approved competency evaluation.

- (i) Certificate of completion; and
 - (j) Tentative time schedule for initiating the program.
- (3) A site visit may be conducted by a representative(s) of the Board;
- (4) The program director will be notified of approval or non-approval.

Following receipt of notification from the Board of approval or non-approval:

- (a) A program that is approved may begin classes according to the schedule submitted;
- (b) A program that is not approved will be notified of the deficiencies and will be re-evaluated after appropriate modifications are made;
- (c) A program denied approval may petition the Board for reconsideration.

(5) An approved nursing assistant level 1 or medication aide training program:

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(a) Shall be required to demonstrate ongoing compliance with the standards of approval at least every two years for continued approval.

(b) Shall be surveyed for consideration of continued approval and may have a survey visit or interim self-evaluation report required by the Board at any time.

(c) May be subject to scheduled or non-scheduled site visits for continued approval or any other purpose at any time.

(d) Shall submit an interim self evaluation during the intervening year or as requested by the Board on forms provided by the Board.

(e) Shall have records available for review.

(f) Shall have adequate financial support for the stability and continuation of the program.

(6) An on-line provider shall have a proven track record of successfully providing professional development, training and educational programs in both classroom and on-line environments in Oregon, either directly or in partnership, in the previous 24 months, and meet all Board requirements prior to being approved.

(7) Following initial approval, level 2 training programs remain approved unless specifically withdrawn by the Board.

(8) Program changes requiring Board approval:

(a) Change of program ownership:

(A) If the change only causes minor changes, there is no need to seek new approval of the program.

(B) If the change causes a substantial difference as determined by the Board through the impact on the students, faculty, or program resources, an application and approval for the program shall be required.

(b) Changes in course content, lab/clinical skill checklist, final exam, certificate of completion, program director, primary instructor, clinical instructor, clinical preceptor, or classroom or clinical training sites shall be submitted to the Board for approval.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 5-2002, f. & cert. ef. 3-5-02; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 7-2006, f. & cert. ef. 5-8-06; BN 2-2008, f. & cert. ef. 2-25-08

851-061-0080

Standards for Program Approval: Faculty Qualifications and Responsibilities

(1) The training of nursing assistants level 1 shall be by or under the supervision of a program director or primary instructor who has at least one year of nursing experience in a licensed nursing facility.

(2) The program director shall hold a current, unencumbered license to practice as a registered nurse in Oregon; and

(a) For a nursing assistant level 1 and level 2 training program, have at least three years of nursing experience, including at least one year of working in direct patient care; and one of the following:

(A) One year of experience on a nursing faculty;

(B) One year of experience in staff development;

(C) Evidence of academic preparation for teaching adults; or

(D) Evidence of equivalent experience.

(b) For a medication aide training program, have at least three years of experience as a Registered Nurse in the last five years, including at least one year as a nurse educator or nurse administrator.

(3) The program director shall:

(a) Act as liaison with the Board related to the program's continuing compliance with the required elements of these rules;

(b) Implement and maintain a program that complies with all Board standards;

(c) Assume the ultimate responsibility for the implementation of the Board-approved curriculum;

(d) Have sufficient time provided for carrying out administrative responsibilities. Number of faculty, students, classes in progress, and locations utilized for classroom and clinical training are to be considered in determining appropriate time allocated;

(e) Recruit, supervise, and evaluate qualified primary instructors and clinical instructors or preceptors;

(f) Develop and implement written policies necessary for the operation of the program, including those maintained under OAR 851-061-0110(1)(c)(G);

(g) Ensure that all students have initiated a criminal history check prior to entering the program and that all students are eligible pursuant to laws governing the clinical site facility to participate in the program's clinical experiences.

(h) Coordinate classroom and clinical sites and activities;

(i) Ensure that the classroom, lab, and clinical environment is conducive to teaching and learning;

(j) Assure that the clinical setting provides an opportunity for the students to perform the skills taught in the curriculum;

(k) Ensure that a Board-approved primary instructor, clinical instructor, or clinical preceptor is on the premises at all times during scheduled clinical hours;

(l) Supervise or coordinate supervision of students in the clinical setting or assign this responsibility to the primary instructor.

(m) Provide or arrange for the orientation of the primary and clinical instructors or clinical preceptors to their role and responsibilities.

(n) Assess students' reactions to course content, instructional effectiveness, and other aspects of the learning experience;

(o) Submit program data upon request of the Board on forms provided by the Board;

(p) Submit required reports;

(q) Verify that the training facility in which the training program is offered or utilized for the clinical experience is licensed under the appropriate licensing agency and is in substantial compliance with all standards for licensure;

(r) Verify that a facility utilized for out-of-state clinical experience:

(A) Has not been found within the preceding two years, by the state survey and certification agency, using the currently applicable Center for Medicare and Medicaid Services regulations, to be categorized as providing substandard quality of care;

(B) Is no more than 50 miles from an Oregon border; and

(C) Has given permission for site visit(s) by Board staff.

(s) For medication aide training programs, determine student eligibility by verifying that the applicant:

(A) Holds a current certificate to practice as a CNA 1 on the CNA Registry;

(B) Has graduated from an approved basic nurse aide training program; and six months prior to enrollment in the medication aide training program; and

(C) Meets the employment requirement of at least six months of full time experience as a nursing assistant or the equivalent in part time experience since graduation from a basic nursing assistant training program unless the applicant is exempt under OAR 851-062-0090.

(4) The primary instructor shall hold a current, unencumbered license to practice as a registered nurse in Oregon; and

(a) For a nursing assistant level 1 and level 2 training program, have two years experience as a registered nurse and teaching experience or educational preparation for teaching adults.

(b) For a medication aide training program, have at least three years of nursing experience in the last five years, to include:

(A) One year as a nurse educator, a primary instructor in a nursing assistant training program or as a nurse administrator, and

(B) One year working with the particular type of clientele or providing clinical instruction in a setting with the particular type of clientele with whom students will have their clinical experience.

(c) May be the director of nursing service in a long term care facility only if there is evidence of formal arrangements for the director of nursing position to be filled by another qualified nurse during the period of instruction.

(5) The primary instructor shall:

(a) Implement the required Board-approved curriculum;

(b) Provide effective teaching strategies in an environment that encourages student and instructor interaction;

(c) Supervise and be present in the classroom at least 75% of the time that classes are being taught, or for on-line programs, be available for consultation and additional clarification at least every 72 hours;

(d) Evaluate competency of students; and

(e) In addition, for medication aide training programs, the primary instructor shall:

(A) Obtain approval from a facility prior to using a facility employee as a clinical preceptor. The facility has the right to refuse such approval;

(B) Ensure that each student's clinical experience includes administration of medications by all approved routes of administration and includes administration of a variety of medications; and

(C) Supervise the clinical experience for all medication aide students. Clinical preceptors may be used as appropriate.

(6) Other personnel from the healthcare professions may supplement the instructor in their area of expertise:

(a) For a nursing assistant level 1 and level 2 training program, the program director or primary instructor may:

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(A) Involve as trainers for a specific portion of the nursing assistant training, other licensed nursing personnel or other licensed health care professionals who have at least one year of experience in their field.

(B) Use an approved clinical instructor who shall:

(i) Hold a current, unencumbered license to practice as a registered nurse in Oregon; and

(ii) Have the equivalent of one year full time experience as a registered nurse.

(C) Use an approved clinical preceptor who shall:

(i) Hold a current, unencumbered license to practice nursing in Oregon; and

(ii) Have the equivalent of at least one year of experience as a licensed nurse.

(b) For a medication aide training program, the clinical preceptor shall:

(A) Hold a current, unencumbered license to practice nursing in Oregon;

(B) Have the equivalent of one year full time experience as a licensed nurse and shall have three months' nursing experience in the setting in which the medication aide student will be passing medications;

(C) Provide direct supervision; and

(D) Have only the responsibility for clinical precepting during the scheduled clinical experience.

(c) Certified medication aides, resident care managers, and directors of nursing are prohibited from acting as clinical preceptors for medication aide students.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.440 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 18-2002, f. & cert. ef. 10-18-02; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2004, f. & cert. ef. 7-13-04; BN 7-2006, f. & cert. ef. 5-8-06; BN 2-2008, f. & cert. ef. 2-25-08

851-061-0090

Standards for Program Approval: Curriculum

(1) Board-approved curriculum shall be used in approved nursing assistant level 1 and medication aide training programs.

(2) A nursing assistant level 1 training program shall consist of:

(a) At least 150 hours of instruction divided into 75 hours of classroom instruction and 75 hours of supervised clinical experience;

(b) At least 24 hours of supervised classroom/laboratory instruction with return student demonstrations of learned skills to determine comprehension and competency, in addition to facility orientation, preceding the students' care of clients; and

(c) At least 75 hours of supervised clinical experience in a hospital, licensed nursing, residential, or assisted living facility that has a registered nurse on duty during all scheduled student clinical hours and is in substantial compliance with all standards of licensure.

(3) An on-line nursing assistant level 1 training program shall consist of:

(a) At least the equivalent of 51 hours according to the nationally recognized standard of content to credit ratio;

(b) At least 24 hours of supervised laboratory instruction provided no later than two weeks after the successful completion of the on-line portion of the curriculum. The laboratory portion of the program shall include return student demonstration of learned skills to determine comprehension and competency, in addition to facility orientation, preceding the students' care of clients;

(c) At least 75 hours of supervised clinical experience in a hospital, licensed nursing, residential, or assisted living facility that has a registered nurse on duty during all scheduled student clinical hours and is in substantial compliance with all standards of licensure;

(d) Ongoing technical support service(s) to sustain the electronically offered program including provisions for staffing, reliability, privacy, and security; and

(e) Ongoing technical support service(s) for students on each required educational technology hardware, software, and delivery system.

(4) A nursing assistant level 2 training program will have Board approved:

(a) Standardized category curriculum that may vary in training hours from other Board approved standardized category curricula; and

(b) Competency evaluation.

(5) Medication aide training program classroom and clinical instruction hours:

(a) A medication aide training program shall consist of at least 80 hours of instruction divided into at least 24 hours of classroom instruction and at least 24 hours of 1:1 supervised clinical experience.

(b) All clinical hours shall be completed at one site (licensed nursing facility, hospital, assisted living facility, or residential care facility).

(c) All required clinical hours shall be in medication administration related activities.

(6) Admission requirements for medication aide training programs shall be:

(a) Current, unencumbered CNA 1 status on the Oregon CNA Registry maintained by the Board;

(b) Documentation of graduation from an approved basic nursing assistant level 1 training program at least six months prior to enrollment in the medication aide training program; and

(c) Documentation of at least six months full time experience as a nursing assistant level 1 or the equivalent in part time experience since graduation from a basic nursing assistant training program.

(7) Classroom and clinical faculty/student ratios for nursing assistant level 1 and medication aide training programs:

(a) Classroom:

(A) The ratio of students per instructor shall be such that each trainee is provided with registered nurse assistance and supervision and be no more than 20 students per instructor for classroom.

(B) The amount of students assigned per instructor with self-directed, online instruction shall be such that each trainee is provided with consultation and additional clarification by a Board approved instructor within 72 hours of a trainee's inquiry.

(C) The ratio of students per instructor with instructor-directed, online instruction shall be such that each trainee is provided with consultation and additional clarification by a Board approved instructor within 72 hours of a trainee's inquiry, and the class size shall be no more than 20 students per instructor per online classroom.

(b) Clinical:

(A) The ratio of students per instructor in a nursing assistant level 1 training program shall be no more than 10 students per instructor at all times during the clinical experience.

(B) The ratio of students per instructor in a medication aide training program shall begin with a ratio of one clinical preceptor to one medication aide student during the first 24 hours of the clinical experience. Less intensive supervision (either more students per preceptor or less direct supervision by preceptor) may occur with satisfactory evaluation and approval of the clinical preceptor and primary instructor.

(8) Clinical experience and demonstration of competency for nursing assistant level 1 and medication aide training programs:

(a) A clinical schedule shall be prepared for all students prior to the beginning of the clinical experience, and provided to the clinical facility director of nursing, the clinical instructor/preceptor, and the student.

(b) Student practice and demonstration of competency for nursing assistant level 1 and medication aide training programs:

(A) Students may provide direct client care within their authorized duties under the supervision of an approved instructor.

(B) Students shall be identified as students at all times while in the clinical area.

(C) Students must not be counted as staff or utilized as staff during the hours that are scheduled for clinical experience.

(D) Students may be on a unit, floor or wing of a facility only under direct supervision of a qualified instructor.

(E) Students shall not be on a unit, floor, or wing without a CNA or licensed nurse.

(F) Students shall provide care only to the level they have been taught and determined competent by the approved clinical instructor.

(c) In addition, for medication aide training programs, the clinical experience shall consist of a minimum of 10 medication passes to a minimum of five residents/patients during the first 20 hours of supervised clinical experience;

(9) Program completion:

(a) Completion of a nursing assistant level 1 or medication aide training means that:

(A) The student has successfully completed 100% of the required classroom and clinical hours and content in the curriculum;

(B) The student has successfully demonstrated the required skills on the laboratory and clinical skills checklist;

(C) The student has achieved a score of 75% or higher on the program's final examination;

(D) The student has successfully completed the clinical portion of the program no later than four months following the last date of classroom instruction or within four months after the successful completion of the on-line portion of the program; and

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(E) In addition, for nursing assistant level 1 training programs, the student has successfully completed current, adult CPR certification in accordance with Board-approved curriculum.

(b) Completion of a nursing assistant level 2 training means that:

(A) The student has successfully completed 100% of the required classroom and clinical hours and content in the curriculum; and

(B) The student has successfully completed the competency evaluation.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 15-2002, f. & cert. ef. 7-17-02; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2004, f. & cert. ef. 7-13-04; BN 12-2005, f. & cert. ef. 12-21-05; BN 7-2006, f. & cert. ef. 5-8-06; BN 2-2008, f. & cert. ef. 2-25-08

851-061-0120

Standards for Approval: Facilities and Services

(1) Facilities used for training shall be in compliance with all applicable federal and state standards.

(2) For programs other than on-line programs, the training classroom shall be large enough to meet the students' and instructor's basic needs and shall have:

- (a) Temperature controlled environment;
- (b) Adequate ventilation;
- (c) A clean, quiet, and undisturbed environment;
- (d) Conditions that are safe and conducive to learning;
- (e) Functional and adequate lighting; and
- (f) Seating and note-taking surfaces for each student.

(3) Laboratory facilities shall have materials, equipment, and supplies needed for student practice of all required skills and be available for the students' and instructor's use during instructional hours throughout the training period.

(4) Resources shall include:

- (a) Needed A-V equipment or modules; and
- (b) Access to library resources.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2008, f. & cert. ef. 2-25-08

Board of Pharmacy
Chapter 855

Rule Caption: Rules changes pertaining to: definitions, pharmacists, background checks, compounding drugs and non-prescription outlets.

Adm. Order No.: BP 2-2008

Filed with Sec. of State: 2-20-2008

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Rules Adopted: 855-010-0045, 855-019-0100, 855-019-0110, 855-019-0150, 855-019-0220, 855-019-0240, 855-019-0250, 855-019-0300, 855-045-0200, 855-045-0210, 855-045-0220, 855-045-0230, 855-045-0250, 855-045-0260, 855-045-0270

Rules Amended: 855-006-0005, 855-035-0005, 855-035-0020, 855-041-0020, 855-041-0060, 855-041-0086, 855-041-0300

Rules Repealed: 855-019-0007, 855-019-0020, 855-019-0035, 855-055-0005, 855-055-0010, 855-055-0015, 855-055-0020

Rules Ren. & Amend: 855-019-0005 to 855-019-0120, 855-019-0010 to 855-019-0125, 855-019-0015 to 855-019-0130, 855-019-0025 to 855-019-0140, 855-019-0030 to 855-019-0130, 855-019-0040 to 855-019-0170, 855-019-0050 to 855-019-0320, 855-019-0055 to 855-019-0310, 855-041-0050 to 855-041-0007, 855-041-0063 to 855-045-0240, 855-041-0085 to 855-019-0210, 855-041-0100 to 855-019-0230, 855-041-0210 to 855-019-0200, 855-041-0400 to 855-019-0260, 855-041-0500 to 855-019-0270, 855-041-0510 to 855-019-0280, 855-041-0520 to 855-019-0290, 855-042-0020 to 855-019-0160

Subject: Amendments to Divisions 19 and 41 reorganize rules to replace "pharmacist" specific requirements in Division 19 and "pharmacy" specific requirements in Division 41. Outdated material is being deleted and rules in Division 19 have been rewritten and new rules are adopted to reflect current national licensing procedures, current pharmacy practices and Board policies.

Division 45 implements a new division for "Sterile and Non-Sterile Compounding" that incorporates parts of the United States Phar-

macopeia standards that the Board and its advisory group believe should be mandatory for pharmacists and pharmacies preparing safe compounded products in Oregon.

Amendments to Division 6 are specific to "consultant pharmacist" and "unprofessional conduct."

Amendments to Division 10 incorporate 2005 statutory authority to conduct criminal history background checks on persons applying for new or renewal of, licensure and registration and for persons under investigation.

Amendments to Division 35 add a new category of nonprescription drug outlets to allow non-profit organizations such as the Oregon Food Bank and the Regional Food Banks to legally distribute donated nonprescription drugs to needy individuals and charitable organizations.

Repeal Division 55 regarding DMSO as the Board no longer has statutory authority to regulate the substance.

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

855-006-0005

Definitions

As used in ORS Chapter 689 and OAR chapter 855:

(1) "Certified Pharmacy Technician" means a person licensed by the State Board of Pharmacy who assists the pharmacist in the practice of pharmacy pursuant to rules of the Board and has completed the specialized education program pursuant to OAR 855-025-0005. Persons used solely for clerical duties, such as record keeping, cashiering, bookkeeping and delivery of medications released by the pharmacist are not considered pharmacy technicians.

(2) "Collaborative Drug Therapy Management" means the participation by a pharmacist in the management of drug therapy pursuant to a written protocol that includes information specific to the dosage, frequency, duration and route of administration of the drug, authorized by a practitioner and initiated upon a prescription order for an individual patient and:

(a) Is agreed to by one pharmacist and one practitioner; or

(b) Is agreed to by one or more pharmacists at a single pharmacy registered by the board and one or more practitioners in a single organized medical group, such as a hospital medical staff, clinic or group practice, including but not limited to organized medical groups using a pharmacy and therapeutics committee.

(3) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

(a) As the result of a practitioner's prescription drug order, or initiative based on the relationship between the practitioner, the pharmacist and the patient, in the course of professional practice; or

(b) For the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing; or

(c) The preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns; or

(d) As a component of a Shared Pharmacy Service agreement as defined in section (21) of this rule.

(4) "Confidential Information" means any patient information obtained by a pharmacist or pharmacy.

(5) "Consulting Pharmacist" means a pharmacist that provides a consulting service regarding a patient medication, therapy management, drug storage and management, security, education, or any other pharmaceutical service.

(6) The "Container" is the device that holds the drug and that is or may be in direct contact with the drug.

(7) "Dispensing" means the preparation and delivery of a prescription drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

(8) "Interpretation and evaluation of prescription orders" means the review of the order for therapeutic and legal correctness. Therapeutic review includes identification of the prescription drug ordered, its applicability and its relationship to the other known medications used by the patient and determination of whether or not the dose and time interval of administration are within accepted limits of safety. The legal review for correctness of the prescription order includes a determination that the order is valid and has not been altered, is not a forgery, is prescribed for a legitimate medical purpose, contains all information required by federal and state law, and is within the practitioner's scope of practice.

(9) "Labeling" means the process of preparing and affixing of a label to any drug container exclusive, however, of the labeling by a manufactur-

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er, packer or distributor of a non-prescription drug or commercially packaged legend drug or device.

(10) "Monitoring of therapeutic response or adverse effect of drug therapy" means the follow up of the therapeutic or adverse effect of medication upon a patient, including direct consultation with the patient or his agent and review of patient records, as to result and side effect, and the analysis of possible interactions with other medications that may be in the medication regimen of the patient. This section shall not be construed to prohibit monitoring by practitioners or their agents.

(11) "Nationally Certified Exam" means an exam that is approved by the Board which demonstrates successful completion of a Specialized Education Program. The exam must be reliable, psychometrically sound, legally defensible and valid.

(12) "Non-legend drug" means a drug which does not require dispensing by prescription and which is not restricted to use by practitioners only.

(13) "Offering or performing of those acts, services, operations or transactions necessary in the conduct, operation, management and control of pharmacy" means, among other things:

(a) The creation and retention of accurate and complete patient records;

(b) Assuming authority and responsibility for product selection of drugs and devices;

(c) Developing and maintaining a safe practice setting for the pharmacist, for pharmacy staff and for the general public;

(d) Maintaining confidentiality of patient information.

(14) "Oral Counseling" means an oral communication process between a pharmacist and a patient or a patient's agent in which the pharmacist obtains information from the patient (or agent) and the patient's pharmacy records, assesses that information and provides the patient (or agent) with professional advice regarding the safe and effective use of the prescription drug for the purpose of assuring therapeutic appropriateness.

(15) Participation in Drug Selection and Drug Utilization Review:

(a) "Participation in drug selection" means the consultation with the practitioner in the selection of the best possible drug for a particular patient.

(b) "Drug utilization review" means evaluating a prescription drug order in light of the information currently provided to the pharmacist by the patient or the patient's agent and in light of the information contained in the patient's record for the purpose of promoting therapeutic appropriateness by identifying potential problems and consulting with the prescriber, when appropriate. Problems subject to identification during drug utilization review include, but are not limited to:

(A) Over-utilization or under-utilization;

(B) Therapeutic duplication;

(C) Drug-disease contraindications;

(D) Drug-drug interactions;

(E) Incorrect drug dosage;

(F) Incorrect duration of treatment;

(G) Drug-allergy interactions; and

(H) Clinical drug abuse or misuse.

(16) "Pharmaceutical Care" means the responsible provision of drug therapy for the purpose of achieving definite outcomes that improve a patient's quality of life. These outcomes include:

(a) Cure of a disease;

(b) Elimination or reduction of a patient's symptomatology;

(c) Arrest or slowing of a disease process; or

(d) Prevention of a disease or symptomatology.

(17) "Pharmacy Technician" means a person licensed by the State Board of Pharmacy who assists the pharmacist in the practice of pharmacy pursuant to rules of the Board but has not completed the specialized education program pursuant to OAR 855-025-0010.

(18) "Prescription released by the pharmacist" means, a prescription which has been reviewed by the pharmacist that does not require further pharmacist intervention such as reconstitution or counseling.

(19) "Proper and safe storage of drugs and devices and maintenance of proper records therefor" means housing drugs and devices under conditions and circumstances that:

(a) Assure retention of their purity and potency;

(b) Avoid confusion due to similarity of appearance, packaging, labeling or for any other reason;

(c) Assure security and minimize the risk of their loss through accident or theft;

(d) Accurately account for and record their receipt, retention, dispensing, distribution or destruction;

(e) Protect the health, safety and welfare of the pharmacist, pharmacy staff and the general public from harmful exposure to hazardous substances.

(20) "Responsibility for advising, when necessary or when regulated, of therapeutic values, content, hazards and use of drugs and devices" means advice directly to the patient, either verbally or in writing as required by these rules or federal regulation, of the possible therapeutic response to the medication, the names of the chemicals in the medication, the possible side effects of major importance, and the methods of use or administration of a medication.

(21) "Shared Pharmacy Service" means a written agreement, that has been approved in writing by the board, that exists for the processing by a pharmacy of a request from another pharmacy or a practitioner licensed to prescribe the drug, to fill or refill a prescription or a drug order, or to perform processing functions including but not limited to:

(a) Dispensing;

(b) Drug utilization review;

(c) Claims adjudication;

(d) Refill authorizations;

(e) Compounding; and

(f) Therapeutic interventions.

(22) "Specialized Education Program" means:

(a) A program providing education for persons desiring licensure as pharmacy technicians that is approved by the board and offered by an accredited college or university that grants a two-year degree upon successful completion of the program; or

(b) A structured program approved by the board and designed to educate pharmacy technicians in one or more specific issues of patient health and safety that is offered by:

(A) An organization recognized by the board as representing pharmacists or pharmacy technicians;

(B) An employer recognized by the board as representing pharmacists or pharmacy technicians; or

(C) A trade association recognized by the board as representing pharmacies.

(23) "Supervision by a pharmacist" means being stationed within the same work area as the pharmacy technician or certified pharmacy technician being supervised, coupled with the ability to control and be responsible for the pharmacy technician or certified pharmacy technician's action.

(24) "Therapeutic substitution" means the act of dispensing a drug product with a different chemical structure for the drug product prescribed under circumstances where the prescriber has not given clear and conscious direction for substitution of the particular drug for the one which may later be ordered.

(25) "Unprofessional conduct" means:

(a) Fraud or misrepresentation in dealings relating to pharmacy practice with:

(A) Customers, patients or the public;

(B) Practitioners authorized to prescribe drugs, medications or devices;

(C) Insurance companies;

(D) Wholesalers, manufacturers or distributors of drugs, medications or devices;

(E) Health care facilities;

(F) Government agencies;

(G) Drug outlets; or

(b) Illegal use of drugs, medications or devices without a practitioner's prescription, or otherwise contrary to federal or state law or regulation;

(c) Theft of drugs, medications or devices, or theft of any other property or services under circumstances which bear a demonstrable relationship to the practice of pharmacy;

(d) Dispensing a drug, medication or device where the pharmacist knows or should know due to the apparent circumstances that the purported prescription is bogus or that the prescription is issued for other than a legitimate medical purpose, including circumstances such as:

(A) Type of drug prescribed;

(B) Amount prescribed; or

(C) When prescribed out of context of dose.

(e) Any act or practice relating to the practice of pharmacy which is prohibited by state or federal law or regulation;

(f) The disclosure of confidential information in violation of Board rule;

(g) Engaging in collaborative drug therapy management in violation of ORS Chapter 689 and the rules of the Board;

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(h) Authorizing or permitting any person to practice pharmacy in violation of the Oregon Pharmacy Act or the rules of the Board;

(i) Any conduct or practice by a licensee or registrant which the Board determines is contrary to accepted standards of practice.

(26) "Verification" means the confirmation by the pharmacist of the correctness, exactness, accuracy and completeness of the acts, tasks, or functions performed by an intern or a pharmacy technician or a certified pharmacy technician.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.305, 689.405

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1984, f. & ef. 4-16-84; PB 2-1988, f. & cert. ef. 5-3-88; PB 2-1989, f. & cert. ef. 1-30-89; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; BP 4-1998, f. & cert. ef. 8-14-98; BP 1-2006, f. & cert. ef. 6-9-06; BP 12-2006, f. & cert. ef. 12-19-06; BP 2-2008, f. & cert. ef. 2-20-08

855-010-0045

State and Nationwide Criminal Background Checks

(1) The purpose of this rule is to provide for the reasonable screening of: applicants for licensure; directors, officers and designated representatives of drug outlets applying for registration; and individuals subject to investigation by the Board, in order to determine if they have a history of criminal behavior such that they are not fit to be granted or retain a license or registration issued by the Board.

(2) "Subject individual" means a person from whom the Board may require fingerprints for the purpose of enabling the Board to request a state or nationwide criminal records check. In this rule, subject individual means: applicants for licensure or renewal of a license; directors, officers and designated representatives of drug outlets applying for registration or renewal of a registration; and individuals subject to an investigation by the Board.

(3) This rule is to be applied when evaluating the criminal history of a subject individual and conducting fitness determinations based upon such history. The fact that a subject individual does not have an adverse criminal history does not guarantee the granting or renewal of a license, or registration.

(4) The Board may request that the Department of State Police conduct a state criminal history check and a national criminal history check, using fingerprint identification of subject individuals. The Board may conduct state criminal records checks on subject individuals and any licensee through the Law Enforcement Data System maintained by the Department of State Police in accordance with rules adopted, and procedures established, by the Department of State Police. Criminal history information obtained from the Law Enforcement Data System must be handled in accordance with ORS Chapter 181, OAR 257-010 to 257-015 and applicable Oregon State Police procedures.

(5) Additional Information Required. In order to conduct a state and national criminal history check and fitness determination, the Board may require additional information from the subject individual as necessary. Additional information may include but is not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial, or other background information.

(6) In making the fitness determination, the Board may consider:

(a) The nature of any record that may include but is not limited to any record of arrest or conviction for:

(A) Any drug or alcohol offence;

(B) Any felony;

(C) Any offence involving fraud, theft, identity theft or other instance of dishonesty;

(D) Any offence involving violation of federal importation or customs laws or rules;

(E) Any offence requiring registration as a sex offender.

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

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's license or registration; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the license or registration. Intervening circumstances include but are not limited to:

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

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

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime;

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

(F) A recommendation of an employer.

(e) Any false statement made by the individual regarding the criminal history of the individual;

(f) Any refusal to submit or consent to a criminal record check including a refusal to provide fingerprint identification;

(g) Any other pertinent information obtained as part of an investigation.

(7) If a subject individual is determined to be unfit, then the individual may not be granted a license or registration or a renewal of a license or registration. The Board may make a fitness determination conditional upon applicant's acceptance of probation, conditions, limitations, or other restrictions upon licensure or registration.

(8) All background checks shall be requested to include available state and national data, unless obtaining one or the other is an acceptable alternative.

(9) Criminal offender information is confidential. Dissemination of information received under this rule may only be made to people with a demonstrated and legitimate need to know the information. When the information is part of the investigation of an applicant or licensee, it is confidential pursuant to ORS 676.175. Any fingerprint cards used to conduct a check shall be destroyed by either the Federal Bureau of Investigation or the Department of State Police as specified in ORS 181.534.

(10) The Board will permit the subject individual for whom a fingerprint-based criminal records check was conducted to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.

(11) If an applicant, licensee or certificate holder is determined not to be fit for a license or registration, they are entitled to a contested case hearing pursuant to ORS 183.413 to 470 and in accordance with OAR 855-001-0005 to 0017.

(12) A challenge to the accuracy or completeness of information provided by the Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Department of State Police, Federal Bureau of Investigation or reporting agency and not through the contested case process.

(13) 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 Board, the Board will conduct a new criminal history check and re-evaluate the criminal history upon submission of a new criminal history request form.

(14) If the subject individual discontinues the application or fails to cooperate with the criminal history check process then the application is considered incomplete.

(15) Subject individuals will be required to pay the actual costs charged by the Department of State Police for the state and national criminal background check.

Stat. Auth.: ORS 181.534, 689.205

Stats. Implemented: ORS 689.207

Hist.: BP 2-2008, f. & cert. ef. 2-20-08

855-019-0100

Application

(1) These rules apply to any pharmacist who is licensed to practice pharmacy in Oregon including any pharmacist located in another state who is consulting, or providing any other pharmacist service, for a patient, pharmacy or healthcare facility in Oregon.

(2) Where so indicated, these rules also apply to an intern who is licensed in Oregon.

(3) Any pharmacist who engages in the practice of pharmacy in Oregon must be licensed by the Board in accordance with the following rules.

(4) Effective April 1, 2009, any pharmacist who is located in another state and who engages in the practice of pharmacy for a patient, drug outlet or healthcare facility in Oregon, must be licensed by the Board in accordance with the following rules, except that a mail-order pharmacy located in another state is only required to have the pharmacist-in-charge, or similar position, licensed by the Oregon Board of Pharmacy.

(5) The Board may waive any requirement of this rule if, in the Board's judgment, a waiver will further public health or safety. A waiver granted under this section shall only be effective when issued in writing.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.255

Hist.: BP 2-2008, f. & cert. ef. 2-20-08

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855-019-0110

Definitions

In this Division of Rules:

(1) "Collaborative Drug Therapy Management (CDTM)" has the same meaning as defined in OAR 855-006-0005.

(2) "Counseling" means an oral or other appropriate communication process between a pharmacist and a patient or a patient's agent in which the pharmacist obtains information from the patient or patient's agent, and, where appropriate, the patient's pharmacy records, assesses that information and provides the patient or patient's agent with professional advice regarding the safe and effective use of the drug or device for the purpose of assuring therapeutic appropriateness.

(3) "Drug Regimen Review (DRR)" means the process conducted by a pharmacist who is consulting for a long-term-care facility or other institution, either prior to dispensing or at a later time, with the goal of ensuring that optimal patient outcomes are achieved from the drug therapy.

(4) "Drug Utilization Review (DUR)" has the same meaning as defined in OAR 855-006-0005.

(5) "Medication Therapy Management (MTM)" means a distinct service or group of services that is intended to optimize therapeutic outcomes for individual patients. Medication Therapy Management services are independent of, but can occur in conjunction with, the provision of a medication product.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155

Hist.: BP 2-2008, f. & cert. ef. 2-20-08

855-019-0120

Licensure

Before licensure as a pharmacist, an applicant must meet the following requirements:

(1) Provide evidence from a school or college of pharmacy approved by the Board that they have successfully completed all the requirements for graduation and that a degree will be conferred;

(2) Pass the North American Pharmacist Licensure Examination (NAPLEX) exam with a score of not less than 75. This score shall remain valid for only one year unless the Board grants an extension. A candidate who does not attain this score may retake the exam after a minimum of 91 days;

(3) Provide evidence that they have met the requirements for intern hours in accordance with OAR 855-031-0015 through 0040. This evidence must be provided directly to this Board by the certifying board of pharmacy or other authorized certifying authority. Hours worked outside the United States do not count towards Oregon's internship requirement;

(4) Pass the Multistate Pharmacy Jurisprudence Examination (MPJE) exam with a score of not less than 75. The applicant may not take the MJPE until they have completed the required number of intern hours as specified in OAR 855-031-0020. A candidate who does not attain this score may retake the exam after a minimum of 30 days. The MJPE score shall be valid for 6 months unless extended by the Board;

(5) Submit a completed application form which may be obtained from the Board office, and pay the fee specified in Division 110 of this Chapter of rules.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 1-1981(Temp), f. & ef. 4-1-81; 1PB 2-1981, f. & ef. 8-20-81; 1PB 3-1985, f. & ef. 12-2-85; PB 3-1991, f. & cert. ef. 9-19-91; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; BP 1-2002, f. & cert. ef. 1-8-02; Renumbered from 855-019-0005, BP 2-2008, f. & cert. ef. 2-20-08

855-019-0125

Coaching from Board and Staff

No member or employee of the Board shall discuss the contents of an examination, its preparation or use with any candidate or other person. No member or employee of the Board shall coach a candidate or any other person on materials that may be used in the examination nor shall they accept any fees for any act of assistance that would bear on the examination.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; BP 1-2002, f. & cert. ef. 1-8-02; Renumbered from 855-019-0010, BP 2-2008, f. & cert. ef. 2-20-08

855-019-0130

Licensure by Reciprocity

(1) An applicant for licensure as a pharmacist by reciprocity must meet the requirements of ORS 689.265 and the following requirements:

(a) Be a graduate of a school or college of pharmacy approved by the Board;

(b) Have passed the NAPLEX or equivalent examination with a score of not less than 75;

(c) Have passed the MPJE with a score of not less than 75;

(d) Be licensed and in good standing in the state from which the applicant bases the reciprocity application;

(e) Have either:

(A) Been engaged in the practice of pharmacy for period of at least one year including a minimum of 2000 hours of work experience as a licensed pharmacist. Evidence supporting this work experience shall be provided at time of application; or

(B) Met the internship requirements of this state within the one-year period immediately before the date of this application. Evidence supporting this internship shall be provided at time of application.

(2) Licensure as a pharmacist in another state precludes licensure to practice as an intern in the State of Oregon, except for applicants for licensure by examination or by reciprocity who must acquire internship hours to become eligible for licensure, and then only until the required hours have been acquired.

(3) An applicant who has obtained their first professional degree outside the United States is not eligible for licensure by reciprocity until they have met the requirements of OAR 855-019-0150 unless the Board has granted them a waiver in accordance with ORS 689.255(4).

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.265

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 2-1981, f. & ef. 8-20-81; 1PB 1-1984, f. & ef. 2-16-84; PB 1-1989, f. & cert. ef. 1-3-89; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1996, f. & cert. ef. 4-5-96; BP 1-2002, f. & cert. ef. 1-8-02; BP 4-2002, f. & cert. ef. 7-1-02; Renumbered from 855-019-0015 & 0030, BP 2-2008, f. & cert. ef. 2-20-08

855-019-0140

NAPLEX Score Transfer

(1) An applicant for score transfer must be a graduate of a school or college of pharmacy approved by the Board and must have passed the NAPLEX or equivalent examination with a score of at least 75.

(2) Prior to taking the NAPLEX examination for their initial state of licensure, an applicant must have requested the National Association of Boards of Pharmacy to score transfer their NAPLEX score to Oregon.

(3) An applicant must provide the following documentation:

(a) Oregon Score Transfer Application;

(b) A passport regulation photograph;

(c) A copy of a birth certificate, US passport or naturalization documents, or a foreign passport endorsed with a US visa permitting full time employment;

(d) Evidence of successful completion of all graduation requirements from a school or college of pharmacy approved by the Board.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.265

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; BP 1-2002, f. & cert. ef. 1-8-02; Renumbered from 855-019-0025, BP 2-2008, f. & cert. ef. 2-20-08

855-019-0150

Foreign Pharmacy Graduates

(1) Foreign Pharmacy Graduates applying for licensure in Oregon must meet the following requirements:

(a) Provide a copy of a valid visa permitting full time employment;

(b) Provide the original certificate issued by the Foreign Pharmacy Graduate Equivalency Examination Committee; and

(c) Provide evidence that they have passed either:

(A) The Test of English as a Foreign Language (TOEFL), with the Test of Spoken English (TSE) with a score of not less than 50; or

(B) The TOEFL (iBT) test with a score of not less than 26 for the spoken portion.

(d) Pass the North American Pharmacist Licensure Examination (NAPLEX) exam with a score of not less than 75. A candidate who does not attain this score may retake the exam after a minimum of 91 days. This score shall only be valid for one year unless the Board grants an extension;

(e) After having completed the required number of intern hours, pass the MPJE with a score of not less than 75. A candidate who does not attain this score may retake the exam after a minimum of 30 days. The MPJE score shall only be valid for 6 months unless extended by the Board.

(2) An applicant may not count internship hours or practice as a pharmacist completed outside the United States toward Oregon's internship requirement.

(3) An applicant may not count internship hours or practice as a pharmacist that is completed before passing the Foreign Pharmacy Graduate Equivalency Examination, and either the TOEFL with TSE, or TOEFL (iBT) exams toward Oregon's internship requirement.

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(4) The Board may waive any requirement of this rule if a waiver will further public health or safety. A waiver granted under this section shall only be effective when it is issued in writing.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.151, 689.255
Hist.: BP 2-2008, f. & cert. ef. 2-20-08

855-019-0160

Nuclear Pharmacists

In order to qualify under these rules as a nuclear pharmacist, a pharmacist shall:

(1) Meet minimal standards of training and experience in the handling of radioactive materials in accordance with the requirements of the Radiation Protection Services of the Department of Human Services; and

(2) Be a pharmacist licensed to practice in Oregon; and

(3) Submit to the Board of Pharmacy either:

(a) Evidence of current certification in nuclear pharmacy by the Board of Pharmaceutical Specialties; or

(b) Evidence that they meet both the following:

(A) Certification of a minimum of six month on-the-job training under the supervision of a qualified nuclear pharmacist in a nuclear pharmacy providing radiopharmaceutical services; and

(B) Certification of completion of a nuclear pharmacy training program in a college of pharmacy or a nuclear pharmacy training program approved by the Board.

(4) Receive a letter of notification from the Board that the evidence submitted by the pharmacist meets the above requirements and has been accepted by the Board.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151

Hist.: PB 7-1987, f. & ef. 7-8-87; PB 1-1994, f. & cert. ef. 2-2-94; Renumbered from 855-042-0020, BP 2-2008, f. & cert. ef. 2-20-08

855-019-0170

Reinstatement of License

(1) A pharmacist who fails to renew their license by the deadline may reinstate their license as follows:

(a) By payment of the annual license fees and delinquency fees for all years during which the license was lapsed and for the current year; and

(b) By providing certification of completion of the continuing education requirement for all years in which the license was lapsed; and

(c) If their license has been lapsed for more than one year, pass the MPJE with a score of not less than 75.

(2) A pharmacist in good standing who retired from the practice of pharmacy after having been licensed for not less than 20 years need only pay the annual license fees for the year in which they seek a license, however they must provide certification of completion of continuing education for all years since their retirement and pass the MPJE with a score of not less than 75.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.275

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 2-1981, f. & ef. 8-20-81; BP 1-2002, f. & cert. ef. 1-8-02; Renumbered from 855-019-0040, BP 2-2008, f. & cert. ef. 2-20-08

855-019-0200

General Responsibilities of a Pharmacist

ORS 689.025 states that "the practice of pharmacy in the State of Oregon is declared a health care professional practice affecting the public health, safety and welfare". Pharmacy practice is a dynamic patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use, drug-related therapy, and communication for clinical and consultative purposes. A pharmacist licensed to practice pharmacy by the Board has the duty to use that degree of care, skill, diligence and professional judgment that is exercised by an ordinarily careful pharmacist in the same or similar circumstances.

(1) A pharmacist while on duty must ensure that the pharmacy complies with all state and federal laws and rules governing the practice of pharmacy.

(2) A pharmacist shall perform the duties of a pharmacist that include, but are not limited to, DUR, counseling, and final verification of the work performed by those under their supervision.

(3) A pharmacist may not delegate any task that requires the professional judgment of a pharmacist. Such tasks include but are not limited to:

(a) Counseling to a patient or patient's agent, or other healthcare provider;

(b) Verification;

(c) Performing DUR;

(d) Providing a CDTM, DRR, or MTM service;

(e) Ordering, interpreting and monitoring of a laboratory test; and

(f) Oral receipt or transfer of a prescription; except that

(g) An intern under the supervision of a pharmacist may perform all the duties of a technician and the following:

(A) Counseling;

(B) Performing DUR;

(C) Oral receipt or transfer of a prescription,

(D) Immunizations if appropriately trained, and supervised by an immunization qualified pharmacist;

(E) Other activities approved in writing by the Board.

(4) A pharmacist who is supervising an intern is responsible for the actions of that intern, however, this does not absolve the intern from responsibility for their own actions.

(5) A pharmacist on duty is responsible for supervising all pharmacy personnel, and ensuring that pharmacy personnel only work within the scope of duties allowed by the Board.

(6) A pharmacist may not permit non-pharmacist personnel to perform any duty they are not licensed and trained to perform.

(7) A pharmacist while on duty is responsible for the security of the pharmacy area including:

(a) Providing adequate safeguards against theft or diversion of prescription drugs, and records for such drugs;

(b) Ensuring that all records and inventories are maintained in accordance with state and federal laws and rules;

(c) Ensuring that only a pharmacist has access to the pharmacy when the pharmacy is closed.

(8) A pharmacist who has reasonable grounds to believe that prescription drugs or records have been lost or stolen, or any violation of these rules has occurred, shall notify the Board within 15 days.

(9) A pharmacist shall notify the Board in writing, within 15 days, of any change in employment location or residence address.

(10) A pharmacist shall notify the Board in writing, within 15 days, if they are arrested, or receive a citation for anything other than a minor traffic offense. This includes any arrest or citation which involves a drug or alcohol.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.025, 689.151, 689.155

Hist.: PB 15-1989, f. & cert. ef. 12-26-89; PB 2-1997(Temp), f. 10-2-97, cert. ef. 10-4-97; BP 2-1998, f. & cert. ef. 3-23-98; Renumbered from 855-041-0210, BP 2-2008, f. & cert. ef. 2-20-08

855-019-0210

Duties of the Pharmacist Receiving a Prescription

(1) A pharmacist must ensure that all prescriptions, prescription refills, and drug orders are correctly dispensed or prepared for administration in accordance with the prescribing practitioner's authorization.

(2) A pharmacist receiving a prescription is responsible for:

(a) Using professional judgment in dispensing only pursuant to a valid prescription. A pharmacist shall not dispense a prescription if the pharmacist, in their professional judgment, believes that the prescription was issued without a valid patient-practitioner relationship. In this rule, the term practitioner shall include a clinical associate of the practitioner or any other practitioner acting in the practitioner's absence. The prescription must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of their professional practice and not result solely from a questionnaire or an internet-based relationship; and

(b) Ensuring that the prescription contains all the information specified in Division 41 of this chapter of rules including the legible name and contact phone number of the prescribing practitioner for verification purposes.

(3) A pharmacist may refuse to dispense a prescription to any person who lacks proper identification.

(4) Oral Prescription: Upon receipt of an oral prescription, the pharmacist shall promptly reduce the oral prescription to writing or create a permanent electronic record by recording:

(a) The date when the oral prescription was received;

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

(c) The full name and, in the case of controlled substances, the address and the DEA registration number, of the practitioner, or other number as authorized under rules adopted by reference under Division 80 of this chapter of rules;

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

(e) The name, strength, dosage form of the substance, quantity prescribed;

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- (f) The direction for use;
 - (g) The total number of refills authorized by the prescribing practitioner;
- (h) The written signature or initials or electronic identifier of the receiving pharmacist or intern and the identity of the person transmitting the prescription;

(i) The written or electronic record of the oral prescription must be retained on file as required by Division 41 of this chapter of rules, and in the case of controlled substances, under rules adopted by reference in Division 80 of this chapter of rules.

(5) Facsimile Prescription: Upon receipt of a facsimile prescription, the pharmacist must be confident that the prescription was sent by an authorized practitioner or practitioner's agent, and they must verify that:

(a) The facsimile contains all the information specified in division 41 and division 80 of this chapter of rules; and

(b) The facsimile prescription is not for a Schedule II controlled substance unless so permitted under federal regulations or division 80 of this chapter of rules; and

(c) If the facsimile prescription is for a controlled substance, the prescription contains an original, manually-signed signature of the prescriber. In this rule, manually-signed specifically excludes a signature stamp or any form of digital signature unless permitted under federal regulations.

(6) Electronic Prescription: Before filling a prescription that has been received electronically, the pharmacist must be confident that:

(a) The prescription was originated by an authorized practitioner or practitioner's agent;

(b) The prescription contains all the information specified in Division 41 of this chapter of rules.

(c) The prescription is not for a controlled substance unless permitted by federal regulations.

(7) The pharmacist must ensure that a written prescription that is hand-carried or mailed into the pharmacy contains an original manually-signed signature of the prescribing practitioner or practitioner's agent.

(8) Computer Transfer of Prescription Information between Pharmacies: A pharmacist that transmits or receives prescription information to or from another pharmacy electronically must ensure as appropriate:

(a) The accurate transfer of prescription information between pharmacies;

(b) The creation of an original prescription or image of an original prescription containing all the information constituting the prescription and its relevant refill history in a manner that ensures accuracy and accountability and that the pharmacist will use in verifying the prescription;

(c) The prescription is invalidated at the sending pharmacy; and

(d) Compliance with all relevant state and federal laws and rules regarding the transfer of controlled substance prescriptions.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.508

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 1-1994, f. & cert. ef. 2-2-94; Renumbered from 855-041-0085, BP 2-2008, f. & cert. ef. 2-20-08

855-019-0220

Drug Utilization Review (DUR)

(1) A pharmacist shall maintain a record for each patient that contains easily retrievable information necessary for the pharmacist to perform a DUR and to identify previously dispensed drugs at the time a prescription or drug order is presented for dispensing or preparing for administration. The pharmacist shall make a reasonable effort to obtain, record, and maintain the following information:

(a) Full name of the patient for whom the drug is prescribed;

(b) Address and telephone number of the patient;

(c) Patient's gender, age or date of birth;

(d) Chronic medical conditions and disease states of the patient;

(e) A list of all drugs or devices the patient is currently obtaining at that pharmacy showing the name of the drug or device, strength of the drug, the quantity and date received, and the name of the prescribing practitioner;

(f) Known allergies, adverse drug reactions, and drug idiosyncrasies;

(g) Pharmacist comments relevant to the individual's drug therapy, including any other information specific to that patient or drug; and

(h) Additional information, which may relate to DUR, or for the monitoring of the patient as appropriate.

(2) Patient records shall be maintained for at least three years.

(3) The pharmacist or intern shall perform a DUR prior to dispensing or preparing for administration any prescription or refill.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155

Hist.: BP 2-2008, f. & cert. ef. 2-20-08

855-019-0230

Counseling

(1) The pharmacist or intern shall orally counsel the patient or patient's agent on the use of a drug or device as appropriate:

(a) The pharmacist or intern shall counsel the patient on a new prescription and any changes in therapy, including but not limited to a change in directions or strength, or a prescription which is new to the pharmacy;

(b) Only the pharmacist or intern may accept a patient's or patient's agent's request not to be counseled. If, in their professional judgment, the pharmacist or intern believes that the patient's safety may be affected, the pharmacist or intern may choose not to release the prescription until counseling has been completed;

(c) Effective July 1, 2008, the pharmacist or intern that provides counseling or accepts the request not to be counseled shall document the interaction;

(d) A pharmacist shall not allow non-pharmacist personnel to release a prescription that requires counseling, or accept the request not to be counseled;

(e) For a prescription delivered outside of the pharmacy, the pharmacist shall offer in writing, to provide direct counseling and information about the drug, including information on how to contact the pharmacist;

(f) For each patient, the pharmacist or intern shall determine the amount of counseling that is reasonable and necessary under the circumstance to promote safe and effective use or administration of the drug or device, and to facilitate an appropriate therapeutic outcome for that patient.

(2) Counseling on a refill prescription shall be such as a reasonable and prudent pharmacist would provide including but not limited to changes in strength or directions.

(3) A pharmacist may provide counseling in a form other than oral counseling when, in their professional judgment, a form of counseling other than oral counseling would be more effective.

(4) A pharmacist or intern shall initiate and provide counseling under conditions that maintain patient privacy and confidentiality.

(5) For a discharge prescription from a hospital, the pharmacist must ensure that the patient receives appropriate counseling.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155

Hist.: 1PB 2-1980, f. & ef. 4-3-80; PB 8-1990, f. & cert. ef. 12-5-90; PB 5-1992, f. & cert. ef. 10-23-92; PB 1-1994, f. & cert. ef. 2-2-94; BP 4-1998, f. & cert. ef. 8-14-98; BP 1-2002, f. & cert. ef. 1-8-02; Renumbered from 855-041-0100, BP 2-2008, f. & cert. ef. 2-20-08

855-019-0240

Consulting Pharmacist Practice

(1) Subject to the provisions of OAR 855-019-0100(4), a consulting pharmacist who provides services to any facility located in Oregon, must be an Oregon licensed pharmacist.

(2) A consulting pharmacist for an Oregon licensed healthcare facility must perform all duties and functions required by the healthcare facility's licensure as well as by any relevant federal and state laws and rules.

(3) A consulting pharmacist must maintain appropriate records of their consulting activities for three years, and make them available to the Board for inspection.

(4) A consulting pharmacist is responsible for the safe custody and security of all their records and must comply with all relevant federal and state laws and regulations concerning the security and privacy of patient information.

(5) A consulting pharmacist for a facility that is required by the Board to have a consultant pharmacist but which does not have additional consulting requirements under the terms of its licensure with any other state agency, shall provide services that include but are not limited to the following:

(a) Provide the facility with policies and procedure relating to security, storage and distribution of drugs within the facility;

(b) Provide guidance on the proper documentation of drug administration or dispensing;

(c) Provide educational materials or programs as requested.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155

Hist.: BP 2-2008, f. & cert. ef. 2-20-08

855-019-0250

Medication Therapy Management

Medication Therapy Management (MTM) is a distinct service or group of services that is intended to optimize the therapeutic outcomes of a patient. Medication Therapy Management can be an independent service provide by a pharmacist or can be in conjunction with the provision of a medication product with the objectives of:

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- (1) Enhancing appropriate medication use;
- (2) Improving medication adherence;
- (3) Increasing detection of adverse drug events;
- (4) Improving collaboration between practitioner and pharmacist; and
- (5) Improving outcomes.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.151, 689.155
Hist.: BP 2-2008, f. & cert. ef. 2-20-08

855-019-0260

Collaborative Drug Therapy Management

(1) As used in this rule "Collaborative Drug Therapy Management" means the participation by a practitioner and a pharmacist in the management of drug therapy pursuant to a written agreement that includes information on the dosage, frequency, duration and route of administration of the drug, authorized by a practitioner and initiated upon a prescription order for an individual patient and:

- (a) Is agreed to by one practitioner and one pharmacist; or
- (b) Is agreed to by one or more practitioners in a single organized medical group, such as a hospital medical staff, clinic or group practice, including but not limited to organized medical groups using a pharmacy and therapeutics committee, and one or more pharmacists.

(2) A pharmacist shall engage in collaborative drug therapy management with a practitioner only under a written arrangement that includes:

- (a) The identification, either by name or by description, of each of the participating pharmacists;
- (b) The identification, by name or description, of each of the participating practitioners or group of practitioners;
- (c) The name of the principal pharmacist and practitioner who are responsible for development, training, administration, and quality assurance of the arrangement;
- (d) The types of decisions that the pharmacist is allowed to make, which may include:

(A) A detailed description of the types of diseases, drugs, or drug categories involved, and the activities allowed in each case;

(B) A detailed description of the methods, procedures, decision criteria, and plan the pharmacist is to follow when conducting allowed activities;

(C) A detailed description of the activities the pharmacist is to follow including documentation of decisions made and a plan or appropriate mechanism for communication, feedback, and reporting to the practitioner concerning specific decisions made. In addition to the agreement, documentation shall occur on the prescription record, patient profile, a separate log book, or in some other appropriate system;

(D) Circumstances which will cause the pharmacist to initiate communication with the practitioner, including but not limited to the need for a new prescription order and a report of a patient's therapeutic response or any adverse effect.

(e) Training requirement for pharmacist participation and ongoing assessment of competency, if necessary;

(f) Quality assurance and periodic review by a panel of the participating pharmacists and practitioners;

(g) Authorization by the practitioner for the pharmacist to participate in collaborative drug therapy; and

(h) A requirement for the collaborative drug therapy arrangement to be reviewed and updated, or discontinued at least every two years;

(3) The collaborative drug therapy arrangement and associated records must be kept on file in the pharmacy and made available to any appropriate health licensing board upon request.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.151, 689.155
Hist.: 1PB 2-1980, f. & ef. 4-3-80; PB 8-1990, f. & cert. ef. 12-5-90; PB 5-1992, f. & cert. ef. 10-23-92; PB 1-1994, f. & cert. ef. 2-2-94; BP 4-1998, f. & cert. ef. 8-14-98; BP 1-2002, f. & cert. ef. 1-8-02; Renumbered from 855-041-0400, BP 2-2008, f. & cert. ef. 2-20-08

855-019-0270

Qualifications

(1) In this rule and in OAR 855-019-0280, an intern who is appropriately trained and qualified in accordance with Section (3) of this rule may perform the same duties as a pharmacist, provided that the intern is supervised by an appropriately trained and qualified pharmacist.

(2) A pharmacist may administer vaccines and immunizations to persons who are at least 18 years of age as provided by these rules. For the purposes of this rule, a person is at least 18 years of age on the day of the person's eighteenth birthday.

(3) A pharmacist may administer influenza vaccines to persons who are at least 15 years of age. For the purposes of this rule, a person is at least 15 years of age on the day of the person's fifteenth birthday.

(4) A pharmacist may administer vaccines or immunizations under section one or section two of this rule only if:

(a) The pharmacist has completed a course of training accredited by the Centers for Disease Control and Prevention, the American Council on Pharmaceutical Education or a similar health authority or professional body approved by the Board and the Oregon Department of Human Services;

(b) The pharmacist holds a current basic Cardiopulmonary Resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or any other equivalent program that contains a hands-on training component and is valid for not more than three years, and documentation of the certification is placed on file in the pharmacy;

(c) The vaccines and immunizations are administered in accordance with an administration protocol approved by the Oregon Department of Human Services; and

(d) The pharmacist has a current copy of the CDC reference, "Epidemiology and Prevention of Vaccine-Preventable Diseases."

(5) A pharmacist may not delegate the administration of vaccines to another person.

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

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.151, 689.155, 689.645
Hist.: BP 7-2000, f. & cert. ef. 6-29-00; BP 3-2006, f. & cert. ef. 6-9-06; BP 1-2007, f. & cert. ef. 6-29-07; Renumbered from 855-041-0500, BP 2-2008, f. & cert. ef. 2-20-08

855-019-0280

Protocols, Policies and Procedures

(1) Prior to administering a vaccine or immunization to a person who is at least 18 years of age or an influenza vaccine to a person who is at least 15 years of age, a pharmacist must follow written protocols approved by the Oregon Department of Human Services for administration of vaccines and the treatment of severe adverse events following administration of a vaccine.

(2) The pharmacy must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.

(3) The pharmacist must give the appropriate Vaccine Information Statement (VIS) to the patient or legal representative with each dose of vaccine or immunization covered by these forms. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to them, the information provided and has had their questions answered prior to administering the vaccine or immunization.

(4) The pharmacist must report adverse events as required by the Vaccine Adverse Events Reporting System (VAERS) and to the primary care provider as identified by the patient.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.151, 689.155, 689.645
Hist.: BP 7-2000, f. & cert. ef. 6-29-00; BP 3-2006, f. & cert. ef. 6-9-06; Renumbered from 855-041-0510, BP 2-2008, f. & cert. ef. 2-20-08

855-019-0290

Record Keeping and Reporting

(1) A pharmacist who administers any vaccine or immunization shall maintain the following information in the pharmacy records regarding each administration for a minimum of three years:

- (a) The name, address, and date of birth of the patient;
- (b) The date of the administration and site of injection of the vaccine or immunization;

(c) The name, dose, manufacturer, lot number, and expiration date of the vaccine or immunization;

(d) The name and address of the patient's primary health care provider, as identified by the patient;

(e) The name or identifiable initials of the administering pharmacist;

(f) The date the pharmacist reported the vaccination or immunization information to the patient's primary health care provider, as identified by the patient, and, when requested, to the Department of Human Services if different from the date of administration;

(g) Documentation of provision of informed consent for administration of vaccines or immunizations if needed for transmission of records to a primary care provider. The pharmacist must also report to the Department of Human Services as requested for vaccines or immunizations specifically identified by the Department.

(h) Which Vaccine Information Statement (VIS) was provided;

(i) The date of publication of the VIS; and

(j) The date the VIS was provided.

(2) A pharmacist who administers any vaccine or immunization must report in writing to the patient's primary health care provider, as identified

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by the patient, the information required to be maintained by section (1) of this rule. The report shall be made within fourteen days of the date of administration.

(3) A pharmacist who administers any vaccine will keep documentation of current CPR training. This documentation will be kept on site and available for inspection.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.645

Hist.: BP 7-2000, f. & cert. ef. 6-29-00; BP 3-2006, f. & cert. ef. 6-9-06; Renumbered from 855-041-0520, BP 2-2008, f. & cert. ef. 2-20-08

855-019-0300

Duties of a Pharmacist-in-Charge

(1) In accordance with Division 41 of this chapter of rules, a pharmacist must, at all times have one Pharmacist-in-Charge (PIC) employed on a regular basis.

(2) In order to be a PIC, a pharmacist must have:

(a) Completed at least one year of pharmacy practice; or

(b) Completed a Board approved PIC training course either before the appointment or within 30 days after the appointment. With the approval of the Board, this course may be employer provided and may qualify for continuing education credit.

(3) A pharmacist may not be designated PIC of more than two pharmacies without prior written approval by the Board. If such approval is given, the pharmacist must comply with the requirements in sub-section (4)(e) of this rule.

(4) The PIC must perform the following the duties and responsibilities:

(a) When a change of PIC occurs, both outgoing and incoming PICs must report the change to the Board within 15 days of the occurrence, on a form provided by the Board;

(b) The new PIC must complete an inspection on the PIC Annual Self-Inspection Form, within 15 days of becoming PIC;

(c) The PIC may not authorize non-pharmacist employees to have unsupervised access to the pharmacy, except in the case of hospitals that do not have a 24-hour pharmacy where access may be granted as specified in OAR 855-041-0120;

(d) In a hospital only, the PIC is responsible for providing education and training to the nurse supervisor who has been designated to have access to the pharmacy department in the absence of a pharmacist;

(e) A pharmacist designated as PIC for more than one pharmacy shall personally conduct and document a quarterly compliance audit at each location. This audit shall be on the Quarterly PIC Compliance Audit Form provided by the Board;

(f) If a discrepancy is noted on a Board inspection, the PIC must submit a plan of correction within 30 days of receiving notice.

(g) The records and forms required by this section must be filed in the pharmacy, made available to the Board for inspection upon request, and must be retained for three years.

(5) The PIC is responsible for ensuring that the following activities are correctly completed:

(a) An inventory of all controlled substances must be taken within 15 days before or after the effective date of change of PIC, and must be dated and signed by the new PIC. This inventory must be maintained in the pharmacy for three years and in accordance with all federal laws and regulations;

(b) Verifying, on employment and annually, the licensure of all pharmacy personnel who are required to be licensed by the Board;

(c) Conducting an annual inspection of the pharmacy using the PIC Annual Self-Inspection Form provided by the Board, by February 1 each year. The completed self-inspection forms must be signed and dated by the PIC and maintained for three years from the date of completion;

(d) Conducting an annual inventory of all controlled drugs as required by OAR 855-080;

(e) Performing a quarterly inventory reconciliation of all Schedule II controlled drugs.

(f) Ensuring that all pharmacy staff have been trained appropriately for the practice site. Such training should include an annual review of the PIC Self-Inspection Report;

(g) Implementing a quality assurance plan for the pharmacy.

(h) The records and forms required by this section must be filed in the pharmacy, made available to the Board for inspection upon request, and must be retained for three years.

(6) The PIC, along with other licensed pharmacy personnel, must ensure that the pharmacy is in compliance with all state and federal laws and rules governing the practice of pharmacy and that all controlled sub-

stance records and inventories are maintained in accordance with all state and federal laws and rules.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155

Hist.: BP 2-2008, f. & cert. ef. 2-20-08

855-019-0310

Grounds for Discipline

The State Board of Pharmacy may suspend, revoke, or restrict the license of a pharmacist or intern or may impose a civil penalty upon the pharmacist or intern upon the following grounds:

(1) Unprofessional conduct as defined in OAR 855-006-0005;

(2) Repeated or gross negligence;

(3) Incapacity of a nature that prevents a pharmacist or intern from engaging in the practice of pharmacy with reasonable skill, competence and safety to the public;

(4) Habitual or excess use of intoxicants, drugs or controlled substances;

(5) Being found guilty by the Board of a violation of the pharmacy or drug laws of this state or rules pertaining thereto or of statutes, rules or regulations of any other state or of the federal government;

(6) Being found guilty by a court of competent jurisdiction of a felony as defined by the laws of this state;

(7) Being found guilty by a court of competent jurisdiction of a violation of the pharmacy or drug laws of this state or rules pertaining thereto or of statutes, rules or regulations of any other state or of the federal government;

(8) Fraud or intentional misrepresentation in securing or attempting to secure the issuance or renewal of a license to practice pharmacy or a drug outlet registration;

(9) Permitting an individual to engage in the practice of pharmacy without a license or falsely using the title of pharmacist;

(10) Aiding and abetting an individual to engage in the practice of pharmacy without a license or falsely using the title of pharmacist;

(11) Being found by the Board to be in violation of any violation of any of the provisions of ORS 435.010 to 435.130, 453.025, 453.045, 475.035 to 475.190, 475.805 to 475.995 or 689.005 to 689.995 or the rules adopted pursuant thereto.

(12) Failure to appropriately perform the duties of a pharmacist while engaging in the practice of pharmacy as defined in ORS 689.015.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.405

Hist.: PB 1-1989, f. & cert. ef. 1-3-89; BP 1-2002, f. & cert. ef. 1-8-02; BP 6-2005(Temp), f. & cert. ef. 6-28-05 thru 12-13-05; Administrative correction 12-20-05; Renumbered from 855-019-0055, BP 2-2008, f. & cert. ef. 2-20-08

855-019-0320

Petition for Reinstatement of Pharmacist Licenses

(1) A pharmacist license which has been revoked, suspended or restricted will be reinstated only if the Board finds, upon a presentation made by the petitioner, that there is a reasonable assurance that the public interest will be protected if relicensure occurs.

(2) A presentation must consist of a showing by the petitioner of changed circumstances from those surrounding the revocation, suspension or restriction of license. The presentation must include:

(a) A showing that the petitioner has engaged in treatment, programs, or other endeavors or activities since the suspension, revocation or restriction of license which has caused the rehabilitation of the petitioner to the extent that the public's interest would be protected if relicensure should be granted.

(b) Medical, psychological, sociological or other physical, mental or moral appraisals, evaluations or recommendations relating to the petitioner to aid the Board in its determination whether the petitioner has been rehabilitated to the extent that the public's interest would be protected if relicensure should be granted.

(3) Petitions to the Board for reinstatement of licensure after suspension, revocation or restriction must be in writing and must contain:

(a) A written statement of those changed circumstances which the petitioner believes warrant the Board's finding that there is a reasonable assurance that the public interest will be protected if relicensure occurs. Such statement must include a recitation of the treatment, programs, or other endeavors or activities undertaken by the petitioner, more particularly referred to subsection (2)(a) of this rule.

(b) A summarization of the medical, psychological, sociological or other physical, mental, or moral appraisals or recommendations which the petitioner intends to present to the Board pursuant to subsection (2)(b) of this rule.

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(4) If, after opportunity is afforded the petitioner to show otherwise, the Board determines that a petition fails to comply with section (3) of this rule, or has not been made within a reasonable interval from the suspension, revocation, or restriction of license or from a previous petition, the Board will dismiss the petition without further investigation and hearing before the Board.

(5) Petitions which comply with section (3) of this rule will be scheduled for presentation of proof before the Board, and the petitioner will be notified of the time and place.

(6) The completion of any treatment, program or activity which the Board may recommend does not establish a right to reinstatement. The Board must, in each and every case, make a finding based upon the presentation of the petitioner that there is a reasonable assurance that the public interest will be protected if relicensure occurs.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.445

Hist.: 1PB 1-1982, f. & ef. 3-8-82; BP 1-2002, f. & cert. ef. 1-8-02; Renumbered from 855-019-0050, BP 2-2008, f. & cert. ef. 2-20-08

855-035-0005

Applications

(1) All applications for registration of a new or relocated proprietary drug outlet shall be accompanied by the required fees as set forth in 855-110-0007.

(2) Application shall specify the location of the proprietary drug outlet. When the applicant is not the owner of the business, the application shall indicate the owner and the applicant's affiliation with the owner:

(a) If the owner is a partnership or other multiple owner, the names of the partners or persons holding the five largest interests shall be indicated on the application.

(b) If the owner is a corporation, the name filed shall be the same as filed with the Corporation Commissioner. The name of the corporation, the names of the corporation officers and the names of the stockholders who own the five largest interests shall be indicated on the application.

(c) Upon request by the Board, the applicant shall furnish such information as required by the Board regarding the partners, stockholders, or other persons not named in the application.

(3) All registration renewal applications shall be accompanied by the annual fee and contain the same information required in subsections (2)(a), (b) and (c) of this rule.

(4) If the annual registration fee referred to in section (1) of this rule is not paid by January 31 of the current year, a delinquent fee as set forth in OAR 855-110-0007 shall be included with the application for registration renewal.

(5) A change of ownership or location requires a new application, fee and registration within 15 days of the change.

(6) The registration certificate is issued to a person or firm and is non-transferable. Additions or deletions of a partner/partners shall be considered as a change of ownership.

(7) The registration fee cannot be prorated.

(8) No nonprescription drug or medical gas authorized to be sold at retail under this registration shall be sold, given away, or otherwise disposed of until application has been approved and a certificate of registration issued. There shall be four types of drug outlet registrations:

(a) Class A shall be for all outlets except those that own more than one vending machine distributing more than six nonprescription drugs.

(b) Class B shall be for all outlets except those that own more than one vending machine distributing six or less nonprescription drugs.

(c) Class C shall be for all outlets distributing medicinal gases.

(d) Class D shall be for all outlets with more than one vending machine distributing nonprescription drugs.

(e) Class E shall be for any nonprofit, tax exempt, food distribution facility that distributes food products and nonprescription drugs at no cost, other than nominal delivery charges, to charitable organizations including regional food banks, for distribution at no cost to individuals. This registration, which shall be issued at no cost to the registrant, expires on January 31st annually.

Explanation: The intention of this section is that an owner of a single vending machine that contains over-the-counter medications can register as either a Class A or Class B outlet based on the number of medications in the machine. The owner of more than one vending machine that contains over-the-counter medications shall register as a Class D outlet and inform the Board of their locations. Class E registration is intended for the Oregon Food Bank and other regional food banks located in Oregon.

(9) If there is more than one drug outlet under the same roof and each outlet is independently operated by different owners, a separate registration shall be obtained for each outlet.

(10) In case of loss of the certificate of registration, the Board may require a sworn statement before a notary public to be filed in the Board office before duplicate certificates of registration can be issued.

(11) Each vending machine that contains nonprescription drugs must have an obvious and legible statement on the machine that identifies the owner of the machine, advises the customer to check the expiration date of the product before using, and lists the phone number for the Board of Pharmacy.

(12) A Class D nonprescription drug outlet shall keep the Board informed in writing of the current location of all of its vending machines.

(13) Notwithstanding the requirements of this rule and the other rules in this Division, upon written request the Board may waive any of the requirements of this rule or the other rules in this Division if a waiver will further public health and safety. A waiver granted under this section shall only be effective when it is issued in writing.

Stat. Auth.: ORS 689.155 & 689.205

Stats. Implemented: ORS 475.035, 689.135 & 689.305

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 1-1992, f. & cert. ef. 1-31-92; PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 2-2008, f. & cert. ef. 2-20-08

855-035-0020

Sales of Non-Prescription Drugs

Registered nonprescription drug outlets may sell or donate non-prescription drugs in the original and unbroken packages only, properly labeled according to state and federal law, in conformity with rules of the Board. A nonprescription drug outlet shall not purchase or receive nonprescription drugs from a source not registered with the Board.

Stat. Auth.: ORS 475.035 & 689.205

Stats. Implemented: ORS 689.135, 689.305 & 689.315

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 1-1992, f. & cert. ef. 1-31-92; PB 1-1996, f. & cert. ef. 4-5-96; BP 2-2008, f. & cert. ef. 2-20-08

855-041-0007

Applicability of Rules

(1) In conjunction with the rules in Division 19 of this chapter, these rules, OAR 855-041-0015 through 855-041-0620 apply to all retail and institutional drug outlets doing business in Oregon, and to the pharmacists working in these outlets.

(2) The provisions of OAR 855-041-0015 through 855-041-0100 are applicable to all retail drug outlets, including the practice of pharmacy in such outlets, and are applicable to all institutional drug outlets except where OAR 855-041-0105 through 855-041-0160 provide specific exemption or exceptions or where OAR 855-041-0105 through 855-041-0160 are in direct conflict in which case OAR 855-041-0105 through 855-041-0160 shall apply.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.305

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 1-1989, f. & cert. ef. 1-3-89; Renumbered from 855-041-0050, BP 2-2008, f. & cert. ef. 2-20-08

855-041-0020

Personnel (Both Retail and Institutional Drug Outlets)

(1) Each pharmacy must have one pharmacist-in-charge employed on a regular basis at that location who shall be responsible for the daily operation of the pharmacy. The pharmacist-in-charge shall be indicated on the application for a new or relocated pharmacy and for pharmacy renewal registration.

(2) The pharmacy must ensure that it is in compliance with all state and federal laws and rules governing the practice of pharmacy and that all controlled substance records and inventories are maintained in conformance with the keeping and inventory requirements of federal law and board rules.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.305

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1986, f. & ef. 12-8-86; PB 10-1987, f. & ef. 12-8-87; PB 9-1989, f. & cert. ef. 7-20-89; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1995, f. & cert. ef. 4-27-95; PB 1-1996, f. & cert. ef. 4-5-96; BP 1-2001, f. & cert. ef. 3-5-01; BP 2-2008, f. & cert. ef. 2-20-08

855-041-0060

Prescription Records and Retention

(1) Definitions. The following definitions apply to this rule:

(a) An "original prescription" is a prescription maintained in the same physical manner in which a pharmacy first receives the prescription. For example, for a prescription received by the pharmacy in writing on a prescription form, the original prescription consists of the original writing on the prescription form. For a prescription received by the pharmacy orally over the telephone, the original consists of the writing or electronic record that reflects receipt of the oral prescription.

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(b) "Filing" and "file" mean the storage of the original prescription in such a manner that the original prescription is safeguarded and readily retrievable.

(2) Every pharmacy and pharmacist-in-charge of a pharmacy must ensure that original prescriptions are properly filed in compliance with this rule.

(3) All original prescriptions shall be filed for a minimum of three years from the date of first dispensing and shall at all times be open for inspection by the prescriber, and the Board of Pharmacy or its duly authorized agent.

(4) After 120 days, the paper prescription may be destroyed and filed in an electronic form if:

(a) The electronic form shows the exact and legible image of the original prescription;

(b) Notes of clarifications of and changes to the prescription are directly associated with the electronic form of the prescriptions; and

(c) The prescription is not for a controlled substance.

(5) A patient record system shall be maintained by pharmacies for all patients for whom prescription drug orders are dispensed, except for those patients who the pharmacist has good reason to believe will not return to that pharmacy to obtain drugs. The patient record system shall provide for readily retrievable information necessary for the dispensing pharmacist to identify previously dispensed drugs at the time a prescription drug order is presented for dispensing. The pharmacist shall make a reasonable effort to obtain, record, and maintain the following information:

(a) Full name of the patient for whom the drug is intended;

(b) Address and telephone number of the patient;

(c) Patient's age or date of birth;

(d) Patient's gender;

(e) Chronic medical conditions;

(f) A list of all prescription drug orders obtained by the patient at the pharmacy maintaining the patient record showing the name of the drug or device, prescription number, name and strength of the drug, the quantity and date received, and the name of the prescriber;

(g) Known allergies, drug reactions, and drug idiosyncrasies; and

(h) If deemed relevant in the pharmacist's professional judgment:

(A) Pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug; and

(B) Additional information such as chronic conditions or disease states of the patient, the patient's current weight, and the identity of any other drugs, including over-the-counter drugs, or devices currently being used by the patient which may relate to prospective drug review.

(6) Patient records shall be maintained for a period of not less than three years.

(7) Drug Outlet Procedures:

Each drug outlet is accountable for establishing, maintaining, and enforcing their written procedures for:

(a) Securing their legend drugs and the area in which they are prepared, compounded, stored or repackaged;

(b) Performing mandatory prospective drug utilization reviews;

(c) Verifying the accuracy of all completed prescriptions and medical orders before they leave the pharmacy's secured legend area;

(d) Documenting the identification of the pharmacist responsible for the verification of each dispensed medication;

(e) Ensuring the delivery of each completed prescription to the correct party;

(f) Providing appropriate confidential professional advice concerning medications to patients or their agents;

(g) Ensuring that all who work in the pharmacy are appropriately licensed and adequately trained to perform their duties.

(8) This rule is not intended to alter or supersede the recordkeeping requirements of any other federal or Oregon statute or rule, including but not limited to ORS 689.508, OAR 855-041-0065, and rules related to records for prescriptions for controlled substances.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.508

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 1-1994, f. & cert. ef. 2-2-94; BP 3-2005, f. & cert. ef. 4-14-05; BP 2-2008, f. & cert. ef. 2-20-08

855-041-0086

Verification of Prescription Authenticity

Alteration of a written prescription, other than by a pharmacist's or practitioner's authorization, in any manner constitutes an invalid order unless verified with the prescriber.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.508

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; BP 2-2008, f. & cert. ef. 2-20-08

855-041-0300

Out-of State Pharmacies

(1) Every out-of-state pharmacy that delivers prescription drugs or devices to a resident in this state shall be registered with the Oregon Board of Pharmacy.

(2) To qualify for registration under these rules, every out-of-state pharmacy shall be registered and in good standing with the Board of Pharmacy in the pharmacy's state of residence.

(3) Every out-of-state pharmacy shall designate a pharmacist-in-charge, who shall be responsible for all prescription drugs and devices delivered to residents in Oregon. To qualify for this designation, the person must hold a license to practice pharmacy in the state of residence of the out-of-state pharmacy and in Oregon, and be in good standing with both licensing boards.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.225

Hist.: PB 1-1994, f. & cert. ef. 2-2-94; BP 2-2008, f. & cert. ef. 2-20-08

855-045-0200

Application

(1) These rules (OAR 855-045-0200 to 855-045-0270) apply to any person, including any business entity, located in Oregon that engages in the practice of compounding drugs, or any person, including any business entity, located in any other state that compounds drugs for the use of patients located in Oregon. Compounding of radiopharmaceuticals is specifically exempted from these rules where these rules are in conflict with the rules or guidelines established by the Nuclear Regulatory Commission, the Radiation Protection Services of the Oregon Department of Human Services or any other applicable agency. Any person located outside Oregon that compounds drugs for the use of patients located in Oregon is expected to follow the compounding rules of their home state or these rules, whichever are more stringent.

(2) These rules apply to sterile and non-sterile compounding of medications that are prepared for a specific patient and that are prescribed or ordered subject to a valid practitioner – patient relationship.

(3) Whilst the Board does not insist on rigid application of, or adherence to, all the guidelines of the current edition of the United States Pharmacopeia Chapters 795 (USP 795) and 797 (USP 797), it expects pharmacists engaging in compounding to adhere to those guidelines that apply to their practice setting and in all situations to comply with the spirit of USP 795 and USP 797.

(4) Any compounding activity that is not pursuant to a valid prescription or an order to prepare for administration and for a specific patient is considered to be manufacturing, and any person engaged in manufacturing must be registered in accordance with OAR 855-060-0001, with the following exceptions:

(a) Compounding by a pharmacy located in Oregon for a practitioner or dispenser located in Oregon that is covered by a Shared Pharmacy Services agreement as defined in OAR 855-006-0005;

(b) Compounding in anticipation of a prescription drug order or an order to prepare for administration, based on a routine, regularly observed pattern;

(c) Notwithstanding any other provisions of this rule, the preparation of a patient specific product utilizing all non-sterile commercial components, as defined in these rules as Category 1 compounding, is not considered compounding under these rules provided that:

(A) Preparation of these products is an infrequent occurrence;

(B) Quantity of product prepared does not exceed the requirements of a single prescription except that small quantities can be prepared upon request for in-office use by licensed practitioners.

Stat. Auth.: ORS 689.205

Stats Implemented: ORS 689.155

Hist.: BP 2-2008, f. & cert. ef. 2-20-08

855-045-0210

Definitions

As used in this division of administrative rules:

(1) "Airborne Particulate Cleanliness Classification" means the level of cleanliness defined by the maximum allowable number of particles per cubic meter of air as specified in the International Organization of Standardization (ISO) Classification Air Cleanliness (ISO 14644-1). The levels used in these rules are:

(a) ISO Class 5 is an atmospheric environment that contains less than 3,520 particles 0.5 microns in diameter per cubic meter of air.

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(b) ISO Class 7 is an atmospheric environment that contains less than 352,000 particles 0.5 microns in diameter per cubic meter of air.

(c) ISO Class 8 is an atmospheric environment that contains less than 3,520,000 particles 0.5 microns in diameter per cubic meter of air.

(2) "Beyond Use Date" (BUD) means the date after which the preparation may not be dispensed or administered to a patient. BUD has the same meaning as "Expiration Date".

(3) "Biological Safety Cabinet" (BSC) means a ventilated cabinet with an inward airflow for personnel protection, a downward, High Efficiency Particulate Arresting (HEPA) filtered, laminar airflow for product protection, and a HEPA filtered exhaust system for environmental protection.

(4) Categories of compounding: In these rules, compounding is defined as:

(a) Category 1: Nonsterile — Simple: Generally, the mixing of two or more commercial products. In these rules, this is not considered to be compounding.

(b) Category 2: Nonsterile — Complex: Generally, compounding with bulk drug substances or when calculations are required.

(c) Category 3: Sterile — Risk Level I: Low-Risk, as defined in OAR 855-045-0250.

(d) Category 4: Sterile — Risk Level II: Medium-Risk, as defined in OAR 855-045-0250.

(e) Category 5: Sterile — Risk Level III: High-Risk, as defined in OAR 855-045-0250.

(5) "Compounding Aseptic Isolator" (CAI) means a glove box isolator with a microbially retentive HEPA air filter that maintains an aseptic compounding environment within the isolator throughout the compounding and material transfer process.

(6) "Compounded Sterile Preparation" (CSP) means:

(a) A preparation prepared according to the manufacturer's labeled instructions and other manipulations when preparing sterile products that expose the original contents to potential contamination, and includes all preparations compounded in IV rooms; or

(b) A preparation containing nonsterile ingredients, or employing nonsterile components and devices, that must be sterilized before administration; or

(c) Biologics, diagnostics, drugs, nutrients, and radiopharmaceuticals that possess either of the above two characteristics, and which include, but are not limited to, baths and soaks for live organs and tissues, implants, inhalations, injections, powders for injections, irrigations, metered sprays, and ophthalmic and otic preparations.

(7) "Compounding pharmacy" means any pharmacy where sterile or non-sterile compounding occurs on a regular basis.

(8) "Parenteral Admixture" means a sterile preparation that is the combination of one or more sterile products with an appropriate admixture vehicle.

(9) "Laminar Airflow Hood" (LAF) means a workspace where the work surface is subjected to a constant, HEPA filtered airflow that is directed towards the user.

Stat. Auth.: ORS 689.205
Stats Implemented: ORS 689.155
Hist.: BP 2-2008, f. & cert. ef. 2-20-08

855-045-0220

Personnel

(1) Personnel who prepare compounded pharmaceuticals, both sterile and non-sterile, shall be provided with appropriate training before they begin to prepare such products including for CSPs, training in the theoretical principles and practical skills of aseptic manipulations.

(2) The pharmacist in charge (PIC) shall establish pharmacy Policies and Procedures that contain protocols in accordance with the guidelines in USP 797, for the initial training and testing of all personnel and for annual retesting in aseptic manipulative skills for those personnel involved in low and medium risk compounding.

(3) Personnel involved in high-risk compounding must be retested in aseptic manipulative skills at least semi-annually.

(4) The PIC shall ensure that training protocols are followed and records are kept for the training of all new personnel and for all continuing education and periodic testing that is completed.

(5) The PIC is responsible for the procedures and the overall operation of all activities within the pharmacy and must:

(a) Ensure all pharmacy personnel involved in preparing compounded products are trained and have demonstrated skills commensurate with the complexity of the procedures they are performing;

(b) Establish a procedure for verification by a pharmacist of the preparation of each completed compounded product. This verification shall be accomplished by a review of each compounded product that includes but is not limited to:

(A) Ensuring that the drug, dose and dosage form ordered are appropriate for the patient;

(B) Verifying that the correct drugs and components were selected;

(C) Confirming that the calculation and quantity of each drug and component is correct;

(D) Verifying the label is correct and where appropriate contains all the information specified in OAR 855-041-0065 and these rules.

(c) Document verification by handwritten initials of the pharmacist responsible for the review.

Stat. Auth.: ORS 689.205
Stats Implemented: ORS 689.155
Hist.: BP 2-2008, f. & cert. ef. 2-20-08

855-045-0230

General Requirements

A person licensed to practice pharmacy by the Oregon Board of Pharmacy who is working in a compounding pharmacy, including a pharmacy that only prepares sterile parenteral products, has the duty to exercise that degree of care, skill, diligence and professional judgment that is used by ordinarily competent, careful pharmacists in the same or similar circumstances in the community of the pharmacist or a similar community.

(1) A pharmacist engaged in compounding shall:

(a) Conform to all relevant federal laws and rules;

(b) Dispense a compounded product only subject to a valid prescription except as provided in OAR 855-045-0200(4), and only when, in their professional judgment, it results from a valid prescriber-patient relationship;

(c) Compound only products that are not commercially available except as allowed in OAR 855-045-0240(2), and, except that with the prior approval of the Board, a commercial product that is temporarily in short supply or otherwise unavailable, may be compounded subject to OAR 855-045-0200(4)(c);

(d) Maintain all records in accordance with OAR 855-045-0270;

(e) Perform final product verification.

(2) The pharmacist-in-charge of a compounding pharmacy including a pharmacy that only prepares sterile parenteral products shall ensure that policies and procedures for that pharmacy are reviewed not less than annually, are available for all staff to refer to, and are complied with by all staff. The policies and procedures for a compounding pharmacy shall include but are not limited to, the following:

(a) An organized index;

(b) Product formula information;

(c) Specifications for a compounding log book in compliance with OAR 855-045-0270;

(d) Conditions and surveillance of the compounding environment;

(e) Compounding procedures including requirements for use of gowns, shoe covers or dedicated shoes, hair covers, gloves and masks;

(f) Cleaning and equipment maintenance procedures;

(g) QA plan and documentation;

(h) Shipping and delivery procedures;

(i) Product labeling;

(j) Procedures for final product verification by the pharmacist;

(k) Compounded product quality procedures including procedures for establishing BUD;

(l) Training requirements for all staff;

(m) Safety procedures and training for personnel handling hazardous materials including:

(A) Use of personal protective equipment;

(B) Availability of Manufacturers' Safety Data Sheets;

(C) Emergency procedures related to spills, fire, or exposure to hazardous materials.

(n) Requirements for availability of reference materials.

(3) Pharmacies that compound sterile products including parenteral products shall, when appropriate, also include in their policies and procedures:

(a) Establishment of BUD;

(b) End Product Testing;

(c) Random sampling of both the environment and CSPs.

(4) The pharmacist-in-charge of a compounding pharmacy shall ensure that a quality assurance plan is written for that pharmacy and that:

(a) It includes record keeping requirements for cleaning, testing and calibration of all equipment and devices;

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(b) Pharmacies that compound sterile products shall additionally include:

(A) Schedules and protocols for End Product Testing. Pharmacies mixing High Risk Level CSPs or extending Beyond Use Dating (BUD), must establish an End Product Testing schedule that includes random sampling. End Product Testing of a mixing process must show an acceptable sampling of the total preparations prepared annually;

(B) Protocols for establishing BUDs. BUDs may not exceed those in USP 797 guidelines unless a quality assurance program is established that verifies End Product Testing beyond the dating established by USP 797. Records to verify sterility and pyrogenicity must be maintained and available for review for three years.

(5) Bulk chemicals require a certificate of analysis.

(6) The labeling of bulk chemical containers shall contain:

(a) The date obtained;

(b) The BUD, which shall be established as specified in the pharmacy policies and procedures but not more than five years after opening unless additional testing is conducted to extend that BUD by not more than one year.

Stat. Auth.: ORS 689.205

Stats Implemented: ORS 689.155

Hist.: BP 2-2008, f. & cert. ef. 2-20-08

855-045-0240

Sterile Parenteral Products

(1) In addition to complying with all the other rules in this chapter of rules that are appropriate to their practice setting, pharmacists compounding sterile parenteral products must comply with the following specific rules.

(a) Establish, maintain and enforce written policies and procedures associated with the pharmacy's preparation and dispensing of parenteral products. Policies and procedures shall be available for inspection at the pharmacy. These policies and procedures shall include all requirements of OAR 855-045-0230 as appropriate to the practice setting and:

(A) Requirements for compounding, labeling and storage of the products;

(B) Requirements for administration of parenteral therapy;

(C) Requirements for storage and maintenance of equipment and supplies.

(b) Labeling: In addition to regular labeling requirements, the label shall include:

(A) Rate of infusion, as appropriate;

(B) Beyond Use Date;

(C) Storage requirements or special conditions, if applicable;

(D) Name, quantity and concentration of all ingredients contained in the products, including primary solution;

(E) Hand written initial of the pharmacist who verified the accuracy of the completed product.

(c) Patient Care Services: Counseling shall be available to the patient or patient's agent concerning proper use of parenterals and related supplies furnished by the pharmacy.

(2) In addition to complying with all the requirements in section (1) of this rule, licensed pharmacy personnel preparing parenteral admixtures as defined in OAR 855-045-0210 may:

(a) Prepare multiple source commercially available premixed parenteral admixtures;

(b) Prepare single source premix parenteral admixtures if the individual components of the premixed parenteral solution are commercially available;

(c) Reassign a parenteral admixture to another patient if the admixture does not exceed the documented BUD for that admixture, and the parenteral admixture that was prepared and dispensed for a patient specific order, and has been stored at all times under the control of a person trained and knowledgeable in the storage and administration of drugs;

(d) In the case of a patient specific parenteral admixture, the pharmacist does not need to comply with the worksheet and log requirements in these rules provided that a quality assurance process is in place to address drug recalls, and appropriate safeguards are in place.

Stat. Auth.: ORS 689.205

Stats Implemented: ORS 689.155

Hist.: PB 5-1987, f. & ef. 5-1-87; PB 12-1989, f. & cert. ef. 8-11-89; BP 7-2005, f. 12-14-05, cert. ef. 12-15-05; Renumbered from 855-041-0063, BP 2-2008, f. & cert. ef. 2-20-08

855-045-0250

Definitions of Risk Levels for Sterile Preparations

The three risk levels of CSPs recognized by USP 797 are based on the probability of contamination by microbial, chemical or physical agents.

Low-Risk and Medium-Risk Level CSPs are determined by the potential for microbial contamination during preparation, and High-Risk Level CSPs by the potential for not being properly sterilized before administration to patients. These risk levels are defined, and products must be prepared and managed as follows:

(1) Low Risk Conditions:

(a) CSPs prepared using aseptic manipulation within an air quality environment that is equal to or better than ISO Class 5, using only sterile ingredients, products, components and devices;

(b) No more than three commercially manufactured sterile products and entries into one container of sterile product during preparation;

(c) Manipulations limited to:

(A) Aseptically opening ampoules;

(B) Penetrating sterile stoppers on vials with sterile needles and syringes;

(C) Transferring sterile liquids in sterile syringes to sterile administration devices, package containers of other sterile products, and sterile containers for storage and dispensing.

(d) In the absence of sterility testing, preparations must be properly stored prior to administration as follows:

(A) BUD less than or equal to 48 hours at controlled room temperature;

(B) BUD up to 14 days: under refrigeration;

(C) BUD up to 45 days: in solid frozen state at -20 °C.

(2) Medium Risk Conditions:

(a) CSPs compounded aseptically under Low-Risk Conditions but with the addition of one or more of the following conditions:

(A) Multiple individual or small doses of sterile products are combined or pooled to prepare a CSP that will be administered either to multiple patients or to one patient on multiple occasions;

(B) The compounding process includes complex aseptic manipulations other than single-volume transfer;

(C) The compounding process requires unusually long duration, such as that required to complete dissolution or homogenous mixing.

(b) In the absence of sterility testing, preparations must be properly stored prior to administration as follows:

(A) BUD less than or equal to 30 hours: at controlled room temperature;

(B) BUD up to 9 days: under refrigeration;

(C) BUD up to 45 days: in solid frozen state at -20 °C.

(3) High Risk Conditions:

(a) CSPs compounded from non-sterile ingredients, including products manufactured for other routes of administration, or a non-sterile device is employed before terminal sterilization;

(b) Exposure to an air quality environment that does not meet ISO 5 or better conditions for more than one hour for any of the following:

(A) Sterile contents of commercially manufactured products;

(B) CSPs that lack effective antimicrobial preservatives;

(C) Sterile surfaces of devices and containers for the preparation, transfer, sterilization and packaging of CSPs.

(c) Prior to terminal sterilization:

(A) Nonsterile procedures including weighing and mixing occur in an air quality environment that does not meet ISO 7 or better conditions;

(B) Compounding personnel are improperly gloved or garbed;

(C) Water-containing preparations are stored for more than 6 hours.

(d) In the absence of sterility testing:

(A) A preparation must be properly stored prior to administration as follows:

(i) For a BUD not to exceed 24 hours, at controlled room temperature;

(ii) For a BUD up to three days, under refrigeration;

(iii) For a BUD up to 45 days, in solid frozen state at -20 °C.

(B) All nonsterile devices must be rinsed thoroughly with sterile, pyrogen-free water then thoroughly drained or dried immediately before use;

(C) Terminal sterilization is required as follows:

(i) CSP solutions passed through a filter with a nominal porosity not larger than 1.2 micron preceding or during filling into their final containers to remove particulate matter;

(ii) Sterilization of high-risk level CSPs by filtration must be performed with a sterile 0.22 micron porosity filter entirely within an air quality environment better than or equal to ISO 5.

(4) Immediate-use:

(a) A compounded preparation intended for immediate use may be prepared in an air quality environment that does not meet ISO 5 or better conditions and a preparer is not required to wear gloves or gown, provided

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that it is prepared using aseptic manipulation, only sterile ingredients, products, components and devices are used, and it meets all of the following conditions:

(A) No more than three sterile ingredients, products, components and devices are used;

(B) Only simple manipulation techniques employed;

(C) The preparer completes the preparation without interruption and with no direct contact contamination;

(D) Administration must begin within one hour of preparation;

(E) If prepared by someone other than the person who will administer the drug, labeling must include patient name, name and quantity of ingredients, name of person who prepared it, and exact one hour BUD.

(b) Provided that such preparations do not involve the use of hazardous materials, they are classified as "Low Risk".

(5) "Same-day-use": In this rule, the term "Same-day-use" means that the administration of the preparation shall commence within 24 hours from the time of preparation. A same-day-use product that is prepared using aseptic manipulation in a controlled environment with ISO 5 or better class air quality conditions, using only sterile, ingredients, products, components and devices, may be classified as Low or Medium risk provided that it meets all the following conditions:

(A) Only simple manipulation techniques employed;

(B) The environment meets or exceeds the following conditions:

(i) The mixing cabinet is located in an area that restricts airflow to prevent drafts and reduce particle counts;

(ii) There is a partitioned area around the mixing cabinet to create a buffer zone, which must be at least the width of the hood in front of the mixing cabinet;

(iii) The buffer zone must be clearly identified to prevent cardboard or outer packing material intruding into the buffer zone and to prevent any intrusion during the compounding process;

(iv) The environment is cleaned daily.

(C) The preparer completes the preparation without interruption and with no direct contact contamination;

(D) Batch preparation will not exceed eight CSPs;

(E) Administration of the preparation must begin within twenty-four hours of preparation;

(F) The preparer must use gloves, shoe covers or dedicated shoes, hair covers, gown and mask.

(6) Single-dose vial.

(a) The BUD shall be no greater than one hour from time of initial entry if accessed in an environment worse than ISO 5;

(b) The BUD may be up to 24 hours from time of initial entry if appropriately stored and accessed only in an environment better than or equal to ISO 5;

(c) Medications in a single dose ampoule may not be reused.

(7) Multi-dose vial. The BUD may be up to one month or the manufacturer's assigned BUD whichever is shorter, from time of initial entry, in accordance with the pharmacy policies and procedures.

Stat. Auth.: ORS 689.205

Stats Implemented: ORS 689.155

Hist.: BP 2-2008, f. & cert. ef. 2-20-08

855-045-0260

Pharmacies and Equipment

Minimum standards for pharmacies and equipment are dependent on the risk level of the products being prepared.

(1) Pharmacies and equipment for the preparation of immediate-use CSPs shall be in accordance with OAR 855-045-0250(4).

(2) Effective January 1, 2009, for preparation of low-risk level CSPs, an ISO 5 certified or better Biological Safety Cabinet (BSC), or a Compounding Aseptic Isolator (CAI), or a Laminar Airflow Hood (LAF) shall be used.

(3) Effective January 1, 2009, for preparation of medium-risk level CSPs, an ISO 5 certified or better BSC, CAI or LAF shall be used. BSCs and LAFs shall be placed in an ISO 7 certified or better buffer room or area. This buffer room or area shall be connected to an ISO 8 certified or better anteroom or area. These areas must have positive airflow unless used to prepare hazardous drugs. CAIs may be placed in an area away from traffic and in a room with ISO 8 certified or better environment, or in accordance with the manufacturer's specifications.

(4) Effective January 1, 2009, for preparation of high-risk level CSPs, an ISO 5 certified or better BSC, CAI, or LAF shall be used. BSCs and LAFs shall be placed in an ISO 7 certified or better buffer room or area. This buffer room or area shall be connected to an ISO 8 certified or better anteroom or area. Unless used to prepare hazardous drugs, the buffer room

or zone shall have a positive air pressure of 0.02 to 0.05-inch water column and may not contain a sink or drain. Surfaces and essential furniture in buffer rooms and zones and anterooms shall be nonporous, smooth, non-shedding, impermeable, cleanable and resistant to disinfectants. CAIs may be placed in an area away from traffic and in a room with ISO 8 certified or better environment, or in accordance with the manufacturer's specifications.

(5) Hazardous drugs must be prepared in compliance with state and federal regulations.

(6) Radiopharmaceuticals must be prepared in accordance with OAR 855-042-0005 through 0025.

(7) Pharmacy policies and procedures must include protocols for cleaning and monitoring that include:

(a) A cleaning policy that requires the cleaning of all work surfaces in ISO 7 and 8 areas to be performed at least daily. Floors in ISO 7 and 8 areas cleaned at least daily. Surfaces that are used to prepare CSPs must be cleaned either with a high-level disinfectant or with a medium-level disinfectant that is alternated regularly with another medium-level disinfectant. Empty shelving, walls and ceilings in anterooms and buffer rooms will be cleaned at least monthly with appropriate disinfectant solution;

(b) All ISO classified areas will be checked and certified by a qualified individual no less than every 6 months and whenever the LAF, BSC, or CAI is relocated or the physical structure of the buffer room or anteroom has been altered;

(c) Maintenance, and documentation of maintenance, of all equipment in accordance with manufacturer's specifications.

(8) The Board may waive any requirement of this rule if, in the Board's judgment, a waiver will further public health or safety. A waiver granted under this section shall only be effective when issued in writing.

Stat. Auth.: ORS 689.205

Stats Implemented: ORS 689.155

Hist.: BP 2-2008, f. & cert. ef. 2-20-08

855-045-0270

Records

(1) Except for products prepared subject to OAR 855-045-0200(4)(c), all appropriate compounding logs, formula worksheets and documentation of the preparation, verification, dispensing or transfer of all compounded products must be stored in an organized manner, retained for a minimum of three years and be available for inspection by the Board.

(2) The formula worksheets for compounding pharmacies, excluding those for patient specific IV admixture products, must include but are not limited to the following:

(a) Drug name and strength;

(b) Quantity prepared;

(c) Date prepared;

(d) Pharmacy unique lot number;

(e) Manufacturers' lot numbers and expiration dates of all ingredients used to prepare compounded product;

(f) Beyond Use Date;

(g) Name of verifying pharmacist;

(h) Names of all technicians involved in the process;

(i) Copy of the label used for the compounded product;

(j) Mixing instructions;

(k) Physical evidence of the proper weight of each dry chemical or drug used;

(l) Pharmacist verification that the correct formula and the correct weights or volumes of chemical or drugs were used;

(m) Certification of completion of any additional testing, including endotoxin, required by the pharmacy's policies and procedures;

(n) Any other information required by the pharmacy's policies and procedures.

(3) Record of maintenance and certifications for all equipment must be retained for a minimum of three years and be available for inspection by the Board.

Stat. Auth.: ORS 689.205

Stats Implemented: ORS 689.155

Hist.: BP 2-2008, f. & cert. ef. 2-20-08

Bureau of Labor and Industries Chapter 839

Rule Caption: Amends the prevailing rates of wage for the period beginning January 1, 2008.

Adm. Order No.: BLI 3-2008

Filed with Sec. of State: 2-21-2008

Certified to be Effective: 2-21-08

ADMINISTRATIVE RULES

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).

(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

Rule Caption: Amends rule to clarify apparent conflict in farm Labor Contractor rules.

Adm. Order No.: BLI 4-2008

Filed with Sec. of State: 3-10-2008

Certified to be Effective: 3-10-08

Notice Publication Date: 2-1-2008

Rules Amended: 839-015-0605

Subject: The rule amendment clarifies under what circumstances a person will be considered to have violated the provisions of ORS 658.437(2) relating to the duties of persons to whom workers are provided by a farm labor contractor and when a person will be considered to have knowingly used the services of an unlicensed farm or forest labor contractor.

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

839-015-0605

Knowingly Using the Services of an Unlicensed Contractor

(1) Pursuant to ORS 658.465(1), any person who knowingly uses the services of an unlicensed farm or forest labor contractor is personally, jointly and severally liable with the person acting as a farm or forest labor contractor to the same extent and same manner as provided in ORS 658.453(4).

(2) A person knowingly uses the services of an unlicensed farm or forest labor contractor in violation of ORS 658.465(1), if the person:

(a) Uses the services of a person acting as a farm or forest labor contractor and the person actually knows that the contractor does not have a valid license to act as a farm or forest labor contractor; or

(b) Allows work to be performed on any contract or agreement with an unlicensed farm labor contractor without first complying with the provisions of ORS 658.437(2) and OAR 839-015-0509.

Stat. Auth.: ORS 651 & 658.407(3)

Stats. Implemented: ORS 658.465(1)

Hist.: BL 16-1988, f. & cert. ef. 12-13-88; BLI 12-2001, f. 8-31-01, cert. ef. 9-1-01; BLI 4-2008, f. & cert. ef. 3-10-08

Rule Caption: Clarifies and corrects prevailing wage rate rules.

Adm. Order No.: BLI 5-2008

Filed with Sec. of State: 3-10-2008

Certified to be Effective: 3-10-08

Notice Publication Date: 2-1-2008

Rules Amended: 839-025-0008, 839-025-0015

Subject: The rule amendments replace an erroneous reference to "fiscal year" with "budget period" in OAR 839-025-0008 relating to the period of time a public agency's list of planned public improvements must include, and clarify that pursuant to ORS 279C.836, Public Works Bonds are required to be filed with the Construction Contractors Board by contractors and subcontractors on public works projects of \$100,000 or more.

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

839-025-0008

List of Planned Public Improvements

(1) As used in this rule the term "Public improvement" has the same meaning as it does in ORS 279A.010(aa).

(2) Each public agency must prepare and file with the commissioner a list of every public improvement known to the agency that the agency plans to fund during the subsequent budget period. The list must be submitted to the Prevailing Wage Rate Unit not less than 30 days prior to the adoption of the agency's budget. If the agency revises its list after the adoption of its budget, the agency must file the revised list with the commissioner at that time.

(3) Copies of the lists of planned public improvements filed with the commissioner by public agencies as required by ORS 279C.305(2) are available to the public upon written request to the Prevailing Wage Rate Unit. The request must contain the following information:

(a) The name of the public agency;

(b) The name of any division, section or department of the public agency, if applicable; and

(c) The approximate date of the budget period for which the list was filed.

(4) The cost of supplying copies requested in section (3) of this rule will be calculated in accordance with OAR 839-030-0010, which sets forth the fees to be charged by the bureau when responding to requests for copies of public records.

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(5) To assist public contracting agencies in complying with the provisions of ORS 279C.305 and these rules, the commissioner has prepared two forms, WH-118 and WH-119. The use of these forms by the public contracting agency is optional. However, the statutory requirements of ORS 279C.305(2) are satisfied when these forms are completed and mailed to the Prevailing Wage Rate Unit. The forms should be completed as follows:

(a) The Planned Public Improvement Summary form, WH-118, should be used to summarize all planned projects in the subsequent budget period, noting the project information requested on the form;

(b) ORS 279C.305 requires public contracting agencies to show that they are conforming to state policy when they plan to use their own personnel and equipment on projects estimated to exceed \$125,000. The Capital Improvement Project Cost Comparison Estimate form, WH-119, should be completed for the purpose of complying with this provision. In developing cost comparisons, unit costs which can be substantiated by the agency's cost accounting system should be used. Contractor unit prices that reflect bidding data should also be used.

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

Stat. Auth.: ORS 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 3-1996, f. & cert. ef. 1-26-96; BLI 5-2002, f. 2-14-02, cert. ef. 2-15-02; Renumbered from 839-016-0008, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 42-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 5-2008, f. & cert. ef. 3-10-08

839-025-0015

Public Works Bonds

(1) Pursuant to ORS 279C.836, except as provided, before starting work on a contract or subcontract for a public works project of \$100,000 or more, a contractor or subcontractor must file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in this state in the amount of \$30,000.

(2) The Commissioner of the Bureau of Labor and Industries adopts the language in the Statutory Public Works Bond set forth in **Appendix 5**.

(3) The name of the entity as it appears on the public works bond must be the same as the entity name filed at the Oregon Corporation Division (if applicable).

(a) If the entity is a sole proprietorship, the bond must include the name of the sole proprietor;

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

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

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

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

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

(4) If at any time an entity changes or amends its entity name, the Construction Contractors Board must be notified within 30 days of the date of the change.

(5) If an entity is a sole proprietorship, partnership, limited liability partnership, limited partnership, joint venture, corporation, limited liability company, business trust or any other entity, and changes the entity to one of the other entity types, the new entity must supply a new bond.

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

(7) The inclusion or exclusion of business name(s) on a bond shall not limit the liability of an entity. Claims against a bonded entity will be processed regardless of business names used by such entity.

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

Stat. Auth.: ORS 279C & 651.060

Stats. Implemented: ORS 279C.800 - 279C.870

Hist.: BLI 29-2005, f. 12-29-05, cert. ef. 1-1-06; BLI 5-2008, f. & cert. ef. 3-10-08

Rule Caption: Amends the prevailing rates of wage for the period beginning January 1, 2008.

Adm. Order No.: BLI 6-2008

Filed with Sec. of State: 3-13-2008

Certified to be Effective: 3-13-08

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).

(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,

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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

Columbia River Gorge Commission Chapter 350

Rule Caption: Amendments to Commission Rules for Open Meetings, Public Records, and Administrative Procedure.

Adm. Order No.: CRGC 1-2008

Filed with Sec. of State: 2-21-2008

Certified to be Effective: 4-1-08

Notice Publication Date: 12-1-2007

Rules Adopted: 350-011-0011

Rules Amended: 350-011-0003, 350-012-0007, 350-012-0008, 350-016-0009

Subject: The purpose of the amendments to Commission Rules 350-11, 12, and 16 is to conform these rules to the more restrictive of Oregon's and Washington's statutes as required by the Columbia River Gorge National Scenic Area Act (16 U.S.C. § 544c(b)0). The amendments are responsive to changes made during the 2007 legislative session in Oregon and Washington.

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

350-011-0003

Meetings of Commission to Be Open to Public; Location of Meetings

(1) All meetings of the commission shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by 350-011-0001 to 350-011-0010. A member of the public shall not be required, as a condition of attending a meeting, to give his or her name, other information, complete a questionnaire or fulfill any other condition precedent.

(2) No quorum of the commission shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by 350-011-0001 to 350-011-0010.

(3) The commission shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, sexual orientation or national origin is practiced. However, the fact that organizations with restricted membership hold meetings at the place shall not restrict its use by the commission if use of a place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the commission shall be held within the geographic boundaries over which the commission has jurisdiction, or at the administrative headquarters of the commission or at the other nearest practical location. Training sessions may be held outside the jurisdiction so long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies shall be held within the geographical boundaries over which one of the participating public bodies has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5) Notwithstanding the requirements of section (4) above, committee meetings may be held in any location where the committee deems it useful.

(6) Meetings of the commission shall be held in locations that are accessible to the disabled.

(7) Upon request of a person who is deaf or hard of hearing, the commission shall make a good faith effort to have an interpreter for persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The person requesting the interpreter shall provide the commission at least 48 hours' notice of the request, shall provide the name of the requester, sign language preference and any other relevant information the commission may require. As used in this subsection, "good faith effort" includes, but is not limited to, contacting the Oregon Disabilities Commission, the Washington Aging and Adult Services Administration, or other state or local government or community service agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services.

(8) It shall be considered discrimination on the basis of disability for commission to meet in a place inaccessible to persons with disabilities, or upon request of a person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in Commission Rule 350-011-0008.

(9) Voting by the commission shall take place in public and each member's vote shall be recorded as it is cast. Any vote taken in violation of

this subsection shall be null and void, and shall be considered an "action" under this chapter.

Stat. Auth.: ORS 196.160 & RCW 43.97.015

Stats. Implemented: ORS 196.160, RCW 43.97.015 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 1-1998, f. 10-22-98, cert. ef. 11-24-98; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 1-2008, f. 2-21-08, cert. ef. 4-1-08

350-011-0011

Regular Meetings to Include Time for Public Comment

(1) At all regular meetings of the Commission, the Commission shall provide time for public comment for issues not on the Commission's agenda, and an opportunity for Tribal Nations to address the Commission.

(2) The Commission may limit the time for public comment and opportunity for Tribal Nations to address the Commission in a manner that limits time for each speaker, or the number of speakers.

(3) The Commission may exclude comment that concerns matters likely to come before the Commission in a hearing where the Commission must disclose ex parte communications and comply with the Washington Appearance of Fairness doctrine. The presiding officer may exclude other comment that is inappropriate.

Stat. Auth.: ORS 196.150

Stats. Implemented: ORS 196.150; RCW 43.97.015; 16 U.S.C. Sec. 544c(b)

Hist.: CRGC 1-2008, f. 2-21-08, cert. ef. 4-1-08

350-012-0007

Fulfilling Requests

(1) The Commission shall respond promptly to requests for public records. Within five business days of receiving a public records request, the Commission shall respond by (1) providing the record; (2) acknowledging that the Commission has received the request and providing a reasonable estimate of the time the Commission will require to respond and an estimate of the fees that the requester must pay as a condition of receiving the public records; or (3) denying the public record request. Additional time to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the Commission may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the Commission need not respond to the original request. Denials of requests must be accompanied by a written statement of the specific reasons for denial.

(2) The Commission shall make public records available on a partial or installment basis as records that are part of a larger set of requested records are assembled or make ready for inspection or disclosure.

(3) The Commission shall not deny a request for identifiable public records solely on the basis that the request is overbroad.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2008, f. 2-21-08, cert. ef. 4-1-08

350-012-0008

Public Records Exempt From Disclosure

(1) The following public records are exempt from disclosure under 350-012-0001 to 350-012-0008 unless the public interest requires disclosure in the particular instance:

(a) Records of the commission pertaining to litigation to which the commission is a party if the complaint has been filed, or if the complaint has not been filed, if the commission shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of a specific investigation. Nothing in this

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paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purpose of this paragraph, the record of an arrest or the report of a crime includes, but is not limited to:

(A) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(B) The offense with which the arrested person is charged;

(C) The conditions of release;

(D) The identity of and biographical information concerning both complaining party and victim;

(E) The identity of the investigation and arresting agency and the length of the investigation;

(F) The circumstances of arrest, including time, place, resistance in apprehending fugitives from justice;

(G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

(d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;

(e) Information relating to the appraisal of real estate prior to its acquisition;

(f) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(g) Investigatory information relating to any complaint filed relating to unlawful employment practices until such time as the complain is resolved, or a final administrative determination is made;

(h) Investigatory information relating to any complaint filed relating to unfair labor practices;

(i) Information concerning the location of archaeological sites or objects, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist activity or attraction; and

(j) A personnel discipline action, or materials or documents supporting that action.

(k) Sensitive fish, wildlife, and plant data. Sensitive fish, wildlife, and plant data may be released to the following entities and their agents for fish, wildlife, plant, and land management purposes, or scientific research needs: Governments agencies, public utilities, and accredited colleges and universities. Sensitive fish, wildlife, and plant data may be released to tribal governments. Sensitive fish, wildlife, and plant data may also be released to the owner, lessee, or right-of-way or easement holder of private land to which the data pertains. The release of sensitive fish, wildlife, and plant data may be subject to a confidentiality agreement, except upon release of sensitive fish, wildlife, and plant data to the owner, lessee, or right-of-way or easement holder of private land who initially provided the data. Sensitive fish, wildlife, and plant data does not include data related to reports of predatory wildlife posted on the Washington Department of Fish and Wildlife's internet web site. Sensitive fish, wildlife, and plant data must meet at least one of the following criteria as applied by the Gorge Commission:

(A) The nesting sites or specific locations of endangered, threatened or sensitive species listed in the Management Plan or otherwise designated by the appropriate agencies in Oregon and Washington;

(B) Radio frequencies used in or locational data generated by telemetry studies;

(C) Other location data that could compromise the viability of a specific fish, wildlife or plant population and where one or more of the following criteria are met:

(i) The species has a known commercial or black market value;

(ii) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable;

(iii) There is a known demand to visit, take, or disturb the species; or

(iv) The species has an extremely limited distribution and concentration.

(l) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

(A) An individual;

(B) Buildings or other property; or

(C) Information processing, communication or telecommunication systems, including the information contained in the systems.

(2) The following public records are exempt from disclosure under 350-012-0001 to 350-012-0008:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the commission shows that in the particular instance the public interest in encouraging frank communication between officials and employees of the commission clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to the commission in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the commission has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Any public records or information the disclosure of which is prohibited by federal or state law or regulations;

(e) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged;

(f) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(g) Information about review or approval of programs relating to the security of:

(A) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined by Oregon or Washington state law;

(iv) Petroleum products;

(v) Sewage; or

(vi) Water;

(B) Telecommunications systems, including cellular, wireless or radio systems.

(C) Data transmissions by whatever means provided.

(h) Records of mediation communications that are privileged under the Uniform Mediation Act.

(i) Information gathered for the purpose of preparing a small business impact statement or an analysis of significant rules as required by the states' rulemaking requirements that can be identified to a particular business.

(3) If any public record contains material which is not exempt under subsection (1) or (2) of this section, as well as material which is exempt from disclosure, the commission shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

(4) An individual may submit a written request to a public body not to disclose a specified public record indicating the home address or personal telephone number of the individual. A public body shall not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address or personal telephone number remains available for public inspection.

(a) A request described in subsection (1) of this section shall remain effective until the public body receives a written request for termination but no later than five years after the date that a public body receives the request.

(b) A public body may disclose a home address or personal telephone number of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or with the consent of the individual.

(c) A public body shall not be held liable for granting or denying an exemption from disclosure under this section or any other unauthorized release of a home address or personal telephone number granted an exemption from disclosure under this section.

(5) Notwithstanding the exemptions in 350-012-0008(1) and (2), public records that are more than 25 years old shall be available for inspection

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(6) Notwithstanding 350-012-0001 through 350-012-0008, the Commission shall not disclose records in violation of a user agreement or license that prohibits the Commission from disclosing such records. The Commission shall refer persons to the creator of the record if the Commission has obtained the records through agreement or license, or for which the Commission was charged a fee, other than a nominal fee for reimbursement of duplicating costs, for the record.

(7) Disclosure of information in violation of Rule 350-012-0006(2) is grounds for assessment of a civil penalty pursuant to Rule 350-30 et seq.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 1-2006, f. 3-22-06, cert. ef. 5-1-06; CRGC 1-2008, f. 2-21-08, cert. ef. 4-1-08

350-016-0009

Notice, Hearing and Record in Contested Cases; Informal Dispositions; Hearings Officer

(1) In a contested case hearing, all parties shall be afforded an opportunity for hearing after notice of not less than 20 days, served personally or by registered or certified mail.

(2) The notice shall include:

(a) A statement of the party's right to hearing, with a description of the procedure and time to request a hearing, or a statement of the time and place of the hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved;

(d) A short and plain statement of the matters asserted or charged, and identifying the issues to be considered at the hearing;

(e) A statement indicating whether and under what circumstances an order by default may be entered;

(f) A statement that a party may be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;

(g) A statement that the party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues as allowed by the applicable rules under which the hearing is held.

(h) A statement indicating whether discovery is permitted and, if so, how discovery may be requested.

(i) A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence.

(j) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties.

(k) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the agency.

(l) Whether an attorney will represent the agency in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.

(m) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the agency, whether the person presiding at the hearing is or is not an employee, officer or other representative of the agency and whether that person has the authority to make a final independent determination.

(n) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

(o) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the agency and the hearing reopened.

(p) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(q) A description of the appeal process from the determination or order of the agency.

(r) Unless otherwise ordered by the presiding officer, the names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;

(s) The official file or other reference number and the name of the proceeding;

(t) The name, official title, mailing address, and telephone number of the presiding officer, if known; and

(u) Any other matters considered desirable by the agency.

(3) Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.

(4) The commission may adopt rules of procedure governing participation in contested cases by person appearing as limited parties.

(5) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

(6) An order adverse to a party may be issued upon default only upon prima facie case made on the record of the commission. When an order is effective only if a request for hearing is not made by the party, the record may be made at the time of issuance of the order, and if the order is based only on material included in the application or other submissions of the party, the commission may so certify and so notify the party, and such material shall constitute the evidentiary record of the proceeding if hearing is not requested. The commission shall serve a default order upon the defaulted party or the party's attorney, if any.

(7) Within seven days after service of a default order under subsection (6) of this section, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. At the commencement of the hearing, the officer presiding shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(8) Testimony shall be taken upon oath or affirmation of the witness form when received. The officer presiding at the hearing shall administer oaths or affirmatives to witnesses.

(9) The officer presiding at the hearing shall insure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case and the correct application of law to those facts.

(10) The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) Stipulations.

(d) A statement of matters officially noticed.

(e) Questions and offers of proof, objections and rulings thereon.

(f) A statement of any ex parte communications on a fact in issue made to the officer presiding at the hearing.

(g) Proposed findings and exceptions.

(h) Any proposed, intermediate or final order prepared by the commission or a hearings officer.

(11) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested for purposes of rehearing or court review. The commission may charge the party requesting transcription, unless the party files an appropriate affidavit of indigency.

Stat. Auth.: ORS 197.150 & RCW 43.97

Stats. Implemented: ORS 197.150, RCW 43.97 & 16 U.S.C. 544 et seq.

Hist.: CRGC 1-1987(Temp), f. & ef. 9-10-87; CRGC 2-1987, f. 12-7-87, ef. 12-8-87; CRGC 3-1988(Temp), f. 11-17-88, cert. ef. 11-17-88 thru 2-13-89; CRGC 1-1989, f. 3-2-89, cert. ef. 3-7-89; CRGC 3-1989(Temp), f. 10-4-89, cert. ef. 10-4-89; CRGC 1-1990, f. & cert. ef. 1-16-90; CRGC 2-1990, f. & cert. ef. 5-21-90; CRGC 1-2002, f. 10-16-02 cert. ef. 12-2-02; CRGC 1-2008, f. 2-21-08, cert. ef. 4-1-08

Construction Contractors Board
Chapter 812

Rule Caption: Rules Adopted or Amended to Implement 2007 Legislation.

Adm. Order No.: CCB 5-2008

Filed with Sec. of State: 2-29-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 2-1-2008

Rules Adopted: 812-003-0131, 812-003-0152, 812-003-0153, 812-003-0171, 812-003-0221

ADMINISTRATIVE RULES

Rules Amended: 812-002-0320, 812-002-0380, 812-003-0130, 812-003-0140, 812-003-0155, 812-003-0170, 812-003-0175, 812-003-0200, 812-003-0220, 812-003-0230, 812-003-0260, 812-003-0270, 812-003-0280, 812-003-0290, 812-003-0300, 812-003-0340, 812-003-0360, 812-003-0420, 812-003-0440, 812-003-0450, 812-004-0600, 812-005-0270, 812-005-0800, 812-007-0040, 812-008-0030, 812-008-0040

Subject: 812-002-0320, 812-003-0130, 812-003-0150, 812-003-0152, 812-003-0153, 812-003-0171, 812-003-0221, and 812-004-0600 are amended to clarify the dates the implementation of the new license endorsements under HB 3242, sections 3 & 4 (ORS 701.081 & 701.084) become effective and to implement the new bond and insurance requirements that correspond to the new license requirements. (ORS 701.081 & 701.084 [HB 3241, sections 3 & 4] also establishes the separate bond requirements for residential contractors and commercial contractors.)

812-002-0380 is amended to implement ORS 701.073 (HB 2654, Section 20), which adds products and completed operations to the description of insurance required of contractors.

812-003-0131 is adopted to implement ORS 701.081 and 701.084 (HB 3242, Sections 3 & 4), creating the license endorsements for residential and commercial contractors.

812-003-0140 is amended to follow the statutes that only allow extended licenses (4 years) for renewal applicants and not new applicants. Also by eliminating the four-year renewals, the number of licenses that will have to be converted to the new endorsements is reduced. Note: ORS 701.081 and 701.084 (HB 3242, Sections 3 & 4), requiring endorsements will be implemented no later than July 1, 2010.

812-003-0155 is amend to implement ORS 701.088 (HB 2309, Section 2), which creates a cash deposit or letter of credit in lieu of a surety bond for a general or specialty contractor that is a qualifying nonprofit organization engaged in rehabilitating an illegal drug manufacturing site.

812-003-0170 is amended to clarify the bond amounts required for the period January 1, 2008 through June 30, 2008 to implement ORS 701.068 (HB 2654, Section 22).

812-003-0175 is amended to incorporate cross references to newly adopted 812-003-0171 and housekeeping - defines officer as provided in ORS 701.005(11) (previously 701.005(9)).

812-003-0200 is amended for clarity and to add a cross-reference to new OAR 812-003-0221.

812-003-0220 is amended to retain the existing insurance amounts for licenses that continue until endorsed under new law.

812-003-0230 is amended to implement ORS 701.073 (HB 2654, section 20).

812-003-0260 is amend to implement ORS 701.046 (HB 2654, Section 24), which requires reporting of unpaid construction debt and certain criminal convictions and to implement ORS 701.046 (SB 91, Section 2) that adds the responsible managing individual (RMI) to persons for which reporting is necessary; and to implement ORS 701.050 (HB 3242, Section 8), key employee requirements and to correct cross-references.

812-003-0270 is amended to eliminate changes to effective dates based upon delays; rules rarely applicable and difficult to apply and to complement statute that only allows issuing new licenses for a two-year term.

812-003-0280 is amended to change cross references to 812-003-0260, which sets forth the application requirements for new licensees; makes application forms for renewal applicants consistent with forms for new applicants and eliminates the provisions for limited contractor licenses; superseded by license endorsement require-

ments set forth in ORS 701.081 & 701.084 (HB 3242, sections 3 & 4).

812-003-0290 is amended to implement ORS 701.081 & 701.084 (HB 3242, sections 3 & 4).

812-003-0300 is amended to add a cross reference to 812-003-0290(6).

812-003-0340, 812-003-0360 are amended to clarify language.

812-003-0420 is amended to refer to a newly enacted statutory provision.

812-003-0440 is amended to implement ORS 701.098 (HB 2654, Section 28b), which expands persons for whom criminal convictions may result in license sanctions.

812-003-0450 is amended to implement ORS 701.046 (HB 2654, Section 24), which limits reporting to last five years; rule duplicates new statutory language and to eliminate section (7) because it is duplicative of OAR 812-003-0440.

812-005-0270 is amended to correct an erroneous reference to another rule.

812-005-0800 is amended to eliminate references to limited contractor and licensed developer and replace with terms used in ORS 701.026.

812-007-0040, 812-008-0030, and 812-008-0040 are amended to license categories and replace them with terms used in ORS 701.081 and 701.084 (HB 3242, Sections 3 & 4).

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-002-0320

General Contractor

“General contractor,” as used in ORS 701.005 and for purposes of a residential general contractor, means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor subcontracts or performs in whole or part whenever the sum of all contracts, on any single property, including materials and labor, exceeds \$2,500. “General contractor,” as used in ORS 701.005 and for purposes of a commercial general contractor level 1 or commercial general contractor level 2, means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor subcontracts or performs.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-002-0380

Insurance

“Insurance” required under ORS 701.073 means public liability, personal injury and property damage insurance covering the work of the contractor, including coverage of liability for products and completed operations according to the terms of the policy and subject to applicable policy exclusions.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 670.600, 701.073

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 1-2004, f. & cert. ef. 2-2-04; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0130

License Categories

Until July 1, 2010, the following are license categories as provided in ORS 701.005 (2005 edition):

(1) General Contractor — All structures. A person licensed in this category may:

(a) Bid or perform work on three or more unrelated building trades or crafts on all types of structures, and

(b) Bid or perform the work of a Specialty Contractor — All Structures.

(2) General Contractor — Residential Only. A person licensed in this category may:

(a) Bid or perform work on three or more unrelated building trades or crafts on residential structures or small commercial properties only; and

(b) Bid or perform the work of a Specialty Contractor--Residential-Only.

(3) Specialty Contractor — All structures. A person licensed in this category may:

(a) Bid or perform work on two or less unrelated building trades or crafts with no dollar limit on all types of structures.

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(b) If three or more unrelated trades or crafts are performed or sub-contracted out, the entire contract price cannot exceed \$2,500.

(4) Specialty Contractor — Residential Only. A person licensed in this category may:

(a) Bid or perform work on two or less unrelated building trades or crafts with no dollar limit on all residential structures or small commercial properties only.

(b) If three or more unrelated trades or crafts are performed or sub-contracted out, the entire contract price cannot exceed \$2,500.

(5) Limited Contractor. A person licensed in this category may:

(a) Bid or perform Specialty Contractor, General Contractor, residential, small commercial and large commercial construction work, as long as all of the following conditions are met:

(A) The licensee's annual gross business sales do not exceed \$40,000.

(B) The licensee does not enter into a contract in which the contract price exceeds \$5,000.

(C) If the contract price in a contract for work performed by the licensee is based on time and materials, the amount charged by the licensee shall not exceed \$5,000.

(D) The licensee consents to inspection by the Construction Contractors Board of its Oregon Department of Revenue tax records to verify compliance with paragraph (5)(a)(A) of this rule.

(E) For purposes of this section, "contract" includes a series of agreements between the licensee and a person for work on any single work site within a one-year period.

(6) Inspector. A person licensed in this category may:

(a) Bid or perform inspections, but may not construct, alter, repair, add to, subtract from, improve, move, wreck or demolish for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or do any part thereof, or act as a contractor performing construction management on a project that involves any of these activities.

(7) Licensed Developer. A person licensed in this category may arrange for construction work on property they own or have an interest in as long as they meet the conditions in ORS 701.005(8) (2005 edition).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005, 701.055, 701.058 & 701.085

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0131

License Endorsements

Effective July 1, 2008 for new and renewal licenses, the following are license endorsements as provided in ORS 701.081 and 701.084:

(1) Residential General Contractor. A licensee holding this endorsement may bid or perform work involving an unlimited number of unrelated building trades or crafts on residential or small commercial structures.

(2) Residential Specialty Contractor. A licensee holding this endorsement may:

(a) Bid or perform work involving two or less unrelated building trades or crafts on residential or small commercial structures.

(b) If three or more unrelated trades or crafts are performed or sub-contracted out, the entire contract price cannot exceed \$2,500.

(3) Residential Limited Contractor. A licensee holding this endorsement may bid or perform work involving residential or small commercial structures, as long as all of the following conditions are met:

(a) The licensee's annual gross business sales do not exceed \$40,000.

(b) The licensee does not enter into a contract in which the contract price exceeds \$5,000.

(c) If the contract price in a contract for work performed by the licensee is based on time and materials, the amount charged by the licensee shall not exceed \$5,000.

(d) The licensee consents to inspection by the Construction Contractors Board of its Oregon Department of Revenue tax records to verify compliance with paragraph (3)(a) of this rule.

(e) For purposes of this section, "contract" includes a series of agreements between the licensee and a person for work on any single work site within a one-year period.

(4) Residential Developer. A licensee holding this endorsement may develop property zoned for or intended for use compatible with a residential or small commercial structure as long as the licensee meets the conditions in ORS 701.042.

(5) Commercial General Contractor — Level 1. A licensee holding this endorsement may bid or perform work involving an unlimited number of unrelated building trades or crafts on small or large commercial structures.

(6) Commercial Specialty Contractor — Level 1. A licensee holding this endorsement may bid or perform work involving two or less unrelated building trades or crafts on small or large commercial structures.

(7) Commercial General Contractor — Level 2. A licensee holding this endorsement may bid or perform work involving an unlimited number of unrelated building trades or crafts on small or large commercial structures.

(8) Commercial Specialty Contractor — Level 2. A licensee holding this endorsement may bid or perform work involving two or less unrelated building trades or crafts on small or large commercial structures.

(9) Commercial Developer. A licensee holding this endorsement may develop property zoned for or intended for use compatible with a small or large commercial structure as long as the licensee meets the conditions in ORS 701.042.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.042, 701.081 & 701.084

Hist.: CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0140

Fees

(1) The fee for all license, renewal, or reissue applications is \$260 for a period of two years.

(2) Fees will not be prorated.

(3) Except as provided in sections (4) and (5) of this rule, licensing, renewal, or reissue application fees are non-refundable and nontransferable.

(4) When an applicant withdraws their application for a new license or renewal prior to issuance or fails to complete the licensing or renewal process, the agency may refund the application fee, but will retain a processing fee of \$40.

(5) If a licensee paid an application fee for a four-year renewal and voluntarily terminated their license within the first two years following the renewal, the agency may refund the unused two-year application fee only if the following conditions are met:

(a) The licensee will submit a written request for a voluntary termination of the license and a refund of the unused two-year fee;

(b) The licensee will return the original license card(s) to the agency; and

(c) The agency will retain a \$40 processing fee.

Stat. Auth.: ORS 670.310, 701.130 & 701.235

Stats. Implemented: ORS 701.056, 701.063, 701.238

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 4-2005, f. 8-24-05, cert. ef. 10-1-05; CCB 12-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 3-2008(Temp), f. & cert. ef. 1-10-08 thru 7-7-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0152

Residential Bonds Generally

(1) For all new applications or renewals for residential contractor endorsements on or after July 1, 2008, a properly executed residential bond must:

(a) Be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond.

(b) Be in the form adopted by the Construction Contractors Board as the "Construction Contractors Board Residential Surety Bond" dated November 1, 2007.

(2) If a complaint is filed against a licensee for work done during the work period of a contract entered while the security required under ORS 701.085 (2005) or 701.068 or 701.088 is in effect, the security must be held until final disposition of the complaint.

(3) Bond documents received at the agency office from a surety company or agent via electronic facsimile must be accepted as original documents. The surety must provide the original bond document to the agency upon request.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.085, 701.068, 701.081

Hist.: CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0153

Commercial Bonds Generally

(1) For all new applications or renewals for commercial contractor endorsements on or after July 1, 2008, a properly executed commercial bond must:

(a) Be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond.

(b) Be in the form adopted by the Construction Contractors Board as the "Construction Contractors Board Commercial Surety Bond" dated November 1, 2007.

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(2) If a complaint is filed against a licensee for work done during the work period of a contract entered while the security required under ORS 701.085 (2005) or 701.068 is in effect, the security must be held until final disposition of the complaint.

(3) Bond documents received at the agency office from a surety company or agent via electronic facsimile must be accepted as original documents. The surety must provide the original bond document to the agency upon request.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.085, 701.068, 701.081
Hist.: CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0155

Letters of Credit or Cash Deposits, Generally

(1) A general or specialty contractor that is a qualifying nonprofit organization engaged in rehabilitating an illegal drug manufacturing site may provide a properly executed letter of credit as adopted by the Construction Contractors Board in the form entitled "Letter of Credit for Licensee Rehabilitating Illegal Drug Manufacturing Site" dated December 18, 2007.

(2) A general or specialty contractor that is a qualifying nonprofit organization engaged in rehabilitating an illegal drug manufacturing site may provide a properly executed cash deposit as adopted by the Construction Contractors Board in the form entitled "Assignment of Savings Account or Certificate of Deposit for Licensee Rehabilitating Illegal Drug Manufacturing Site," dated December 18, 2007.

(3) If a complaint is filed against a licensee for work done during the work period of a contract entered while the letter of credit or cash deposit is in effect, the agency shall provide notice to the bank or financial institution that issued the letter of credit or cash deposit. The bank or financial institution must hold the letter of credit or cash deposit until final disposition of the complaint.

(4) Letters of credit or cash assignment documents received at the agency office from a bank or financial institution via electronic facsimile may be accepted as original documents. The bank or financial institution must provide the original documents to the agency upon request.

(5) References in other provisions of Chapter 812 to letters of credit or cash deposits apply only to licenses issued under ORS 701.088 and this section.

Stat. Auth.: ORS 670.310, 701.085 & 701.235
Stats. Implemented: ORS 701.088
Hist.: CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0170

Bond, Letter of Credit or Cash Deposit

(1) Except as provided in subsection (2) below, a surety bond, letter of credit or cash deposit required under ORS 701.085(2005) or 701.068 or 701.088 must be in one of the following amounts:

- (a) For a General Contractor — All Structures: \$15,000;
- (b) For a General Contractor — Residential: \$15,000;
- (c) For a Specialty Contractor — All Structures: \$10,000;
- (d) For a Specialty Contractor — Residential: \$10,000;
- (e) For a Limited Contractor: \$5,000;
- (f) For an Inspector: \$10,000;
- (g) For a Licensed Developer: \$15,000.

(2) Effective January 1, 2008, through June 30, 2008, a surety bond, letter of credit or cash deposit required under ORS 701.068 or 701.088 for new license applicants must be in one of the following amounts:

- (a) For a General Contractor — All Structures: \$20,000;
- (b) For a General Contractor — Residential: \$20,000;
- (c) For a Specialty Contractor — All Structures: \$15,000;
- (d) For a Specialty Contractor — Residential: \$15,000;
- (e) For a Limited Contractor: \$10,000;
- (f) For an Inspector: \$15,000;
- (g) For a Licensed Developer: \$20,000.

(3) A contractor may obtain or maintain a bond, letter of credit or cash deposit in an amount that exceeds the amount required under section (1) or (2) of this rule if the bond, letter of credit or cash deposit obtained or maintained is in an amount that is equal to an amount required under section (1) or (2) of this rule.

Stat. Auth.: ORS 670.310, 701.085 & 701.235
Stats. Implemented: ORS 701.085, sec. 2, ch. 203, OL 2007 (HB 2309)
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0171

Bond, Letter of Credit or Cash Deposit (Effective July 1, 2008)

Beginning July 1, 2008, for all new and renewal license applications, a surety bond as required under ORS 701.068, or a surety bond, letter of credit or cash deposit as required under ORS 701.088, must be in one of the following amounts:

- (1) Residential General Contractor — \$20,000.
- (2) Residential Specialty Contractor — \$15,000.
- (3) Residential Limited Contractor — \$10,000.
- (4) Residential Developer — \$20,000.
- (5) Commercial General Contractor Level 1 — \$75,000.
- (6) Commercial Specialty Contractor Level 1 — \$50,000.
- (7) Commercial General Contractor Level 2 — \$20,000.
- (8) Commercial Specialty Contractor Level 2 — \$20,000.
- (9) Commercial Developer — \$20,000.

Stat. Auth.: ORS 670.310, 701.068, 701.088, 701.235
Stats. Implemented: ORS 701.068, 701.088
Hist.: CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0175

Increased Bond, Letter of Credit or Cash Deposit Requirement, Past Unresolved Activity

(1) A business, including an individual person, applying for or renewing a license will file a bond, letter of credit or cash deposit in an amount up to five times the amount required for the category of license under OAR 812-003-0170 or 812-003-0171, if:

(a) The business has unpaid debts under a final order or arbitration award of the board;

(b) An owner or officer of the business has unpaid debts under a final order or arbitration award of the board; or

(c) An owner or officer of the business was an owner or officer of another business at the time the other business incurred a debt that is the subject of a final order or arbitration award of the board and such debt remains unpaid.

(2) For purposes of this rule, "owner" means an "owner" as defined in ORS 701.077 and OAR 812-002-0537.

(3) For purposes of this rule, "officer" means an "officer" as defined in ORS 701.005(11).

(4) Debts due under a final order or arbitration award of the board include amounts not paid by a surety or financial institution on complaints.

Stat. Auth.: ORS 670.310, 701.068, 701.088, 701.235
Stats. Implemented: ORS 701.068, 701.088
Hist.: CCB 4-2006(Temp), f. & cert. ef. 3-9-06 thru 9-5-06; CCB 9-2006, f. & cert. ef. 9-5-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0200

Insurance Generally

(1) An applicant for a license, renewal or reissue shall certify that the applicant:

(a) Has procured insurance from an insurer transacting insurance in Oregon; and

(b) Will continue to meet those insurance requirements for as long as the applicant is licensed.

(2) Licensees shall provide a certificate of insurance or other evidence of insurance as required by the agency upon request or prior to the expiration date of their insurance.

(3) A certificate of insurance must include:

- (a) The name of the insurer;
- (b) Policy or binder number;
- (c) Effective dates of coverage;
- (d) Coverage in at least the amount required in OAR 812-003-0221;
- (e) A statement that products and completed operations coverage is included as required by ORS 701.073(1).
- (f) The agent's name, and agent's telephone number; and
- (g) The CCB listed as the certificate holder.

(4) If the licensee, in performance of work subject to ORS chapter 701, through failure to comply with this rule, causes damage to another entity or to the property of another person for which that entity could have been compensated by an insurer had the required insurance been in effect, the agency may assess a civil penalty against the licensee in an amount up to \$1,000 in addition to such other action as may be taken under ORS 701.098.

Stat. Auth.: ORS 670.310, 701.235
Stats. Implemented: ORS 701.073, 701.098
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 8-2006, f. & cert. ef. 9-5-06; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

ADMINISTRATIVE RULES

812-003-0220

Insurance Amounts

For existing licenses without endorsements on or after July 1, 2008, the following general liability insurance amounts are required under ORS 701.073:

- (1) General Contractor — All Structures: \$500,000;
- (2) General Contractor — Residential: \$500,000;
- (3) Specialty Contractor — All Structures: \$500,000;
- (4) Specialty Contractor — Residential: \$300,000;
- (5) Limited Contractor: \$100,000;
- (6) Inspector: \$300,000;
- (7) Licensed Developer: \$500,000.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.073

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0221

Insurance Amounts (Effective July 1, 2008)

Beginning July 1, 2008, for all new and renewal license applications, insurance amounts as required under ORS 701.073, 701.081, and 701.084, must be in one of the following amounts:

- (1) Residential General Contractor — \$500,000 per occurrence.
- (2) Residential Specialty Contractor — \$300,000 per occurrence.
- (3) Residential Limited Contractor — \$100,000 per occurrence.
- (4) Residential Developer — \$500,000 per occurrence.
- (5) Commercial General Contractor Level 1 — \$2,000,000 aggregate.
- (6) Commercial Specialty Contractor Level 1 — \$1,000,000 aggregate.
- (7) Commercial General Contractor Level 2 — \$1,000,000 aggregate.
- (8) Commercial Specialty Contractor Level 2 — \$500,000 per occurrence.
- (9) Commercial Developer — \$500,000 per occurrence.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.073, 701.081, 701.084

Hist.: CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0230

Effective and Cancellation Dates of the Insurance

(1) For purposes of licensing, the effective date of the insurance required under ORS 701.073, 701.081 and 701.084 is the date on which the licensee has first met all requirements for licensing, renewal or reissue as determined by the agency.

(2) The insurance described in section (1) of this rule shall remain in effect until the license is suspended, terminated, revoked, expired, lapsed, or inactive, or until the insurance expires or a cancellation notice is provided by the insurer.

(3) Immediately upon cancellation or expiration of the insurance described in section (1) of this rule, the agency may send an emergency suspension notice to the contractor as provided for in ORS 701.098(4)(a)(B), informing the contractor that the license has been suspended.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.073, 701.081, 701.084 & 701.098

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

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) 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.

(l) 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

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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

812-003-0270

Effective Dates of New License

(1) A completed application as required under OAR 812-003-0260 shall be on file with the agency before a new license may be issued.

(2) Licenses will be issued for a period of two years.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.063
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2008(Temp), f. & cert. ef. 1-10-08 thru 7-7-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0280

Renewal and Reissue of License

Each entity must complete a form prescribed by the agency. Notwithstanding OAR 812-003-0300(4), a license may be renewed or reissued upon:

(1) The applicant's completion of the renewal form or application form prescribed by the agency including, but not limited to, the information provided in OAR 812-003-0260;

(2) Payment of the fee or fees,

(3) Receipt of the required certification of insurance coverage, and

(4) Receipt of a commercial and/or residential bond, letter of credit or cash deposit. If it appears to the agency that the required letter of credit or cash deposit has terminated or expired, the applicant must submit a new bond, letter of credit or cash deposit.

Stat. Auth.: ORS 670.310, 701.235
Stats. Implemented: ORS 701.063, 701.068, 701.073 & 701.081
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 12-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0290

Effective Dates of Renewal or Reissue of License, License Term

(1) Except as provided in section (2) of this rule, a completed renewal or reissue application required under OAR 812-003-0260 shall be on file with the agency before a license may be renewed or reissued.

(2) The effective date of a license may be prior to the date of receipt of all documents and fees required by law and by these rules if the agency determines that delays in receipt of required documents or fees were caused by agency error.

(3) The effective date of renewal shall be the previous license expiration date when:

(a) All requirements for renewal are met prior to the previous license expiration date; or

(b) All requirements for renewal are met after the previous expiration date, including but not limited to, proof of insurance coverage and a commercial and/or residential bond or letter of credit or cash deposit coverage during the period of lapse, providing the contractor applies for renewal not more than one year after the license lapses.

(4) If the contractor applies for renewal less than one year after the license lapses and does not have proof of insurance coverage and a commercial and/or residential bond or letter of credit or cash deposit coverage during the period of lapse, the effective date of reissue shall be the date all requirements for licensing have been met, including, but not limited to, submission of a renewal form, payment of the fee, a newly issued continuous until canceled bond, or reinstatement of an existing continuous until canceled bond, or letter of credit, or cash deposit, and certification of insurance coverage.

(5) If the contractor applies for renewal more than one year after the license lapses, the effective date of reissue shall be the date all requirements for licensing have been met, including, but not limited to, submission of a new application form, payment of the fee, a newly issued continuous until canceled bond, or reinstatement of an existing continuous until canceled bond, or letter of credit, or cash deposit, and certification of insurance coverage.

(6) Notwithstanding sections (2) through (5) of this section, licenses that expire before July 1, 2008, may not renew on or after July 1, 2008, except by complying with the renewal requirements set forth in OAR 812-003-0280 and with the bond and insurance requirements set forth in OAR 812-003-0152, 812-003-0153, 812-003-0171, and 812-003-0221. The

effective date of the renewal will be the date upon which all requirements for renewal are met, including but not limited to, proof of insurance coverage and bond or letter of credit or cash deposit. Such licenses will not be backdated to the previous expiration date.

(7) Licenses will be reissued or renewed for a period of two years.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.063
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04, CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0300

Consequence of Lapse in License

(1) An entity whose license has lapsed is considered unlicensed from the date the lapse occurred unless or until the date the license is:

(a) Backdated and renewed;

(b) Reissued; or

(c) Reinstated.

(2) During a period of lapse, the entity shall not perform the work of a contractor.

(3) Except as provided in OAR 812-003-0290, a period of lapse will end and the license previously issued will again become valid on the date upon which the agency receives the missing items that caused the lapse.

(4) A license that has lapsed for 24 months or more must be issued a new identifying license number.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.026, 701.063, 701.098
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 12-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0340

Inactive Status Request at Renewal

(1) A request to convert a license to inactive status made at the time of renewal of the license must be accompanied by fees required under OAR 812-003-0140.

(2) If a license is converted to inactive status at the time of renewal of the license, the effective date of the renewed license shall be the expiration date of the previous license. An inactive license, if renewed, shall expire two years after its effective date.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.063
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0360

Inactive Status Request after Lapse

(1) A request to renew a license and convert it to inactive status made after a lapse due to the expiration of the license must be accompanied by fees required under OAR 812-003-0140.

(2) If a license is renewed and converted to inactive status after a lapse due to expiration of the license, the agency will establish the effective date of the license. An inactive license, if renewed, shall expire two years after its effective date.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 701.063
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0420

Davis Bacon Act

(1) On all construction projects regulated under the state Prevailing Wage Law, ORS 279C.800 to 279C.870 or the Davis Bacon Act and related acts, 40 USC 276a, the primary contractor shall provide the list of subcontractors required by ORS 701.345, to the contracting public agency and to the Wage and Hour Division of the Bureau of Labor and Industries, 800 NE Oregon #32, Portland OR 97232.

(2) The initial list of subcontractors will be submitted to the contracting public agency and to the Wage and Hour Division of the Bureau of Labor and Industries on the same date that the initial Payroll and Certified Statement form (WH-38) is due. Instructions for submitting form WH-38 are contained in OAR 839-016-0010.

(3) The primary contractor will prepare and submit updated lists of subcontractors with each submittal of the Payroll and Certified Statement form (WH-38).

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 279C.800-279C.870, 701.345
Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

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812-003-0440

Notification of Conviction of a Crime

A licensee or applicant, or an owner or officer of the licensee or applicant who has been convicted of a crime listed in ORS 701.098(1)(h) must notify the agency in writing within 30 days from the date of the entry of the judgment of conviction.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.098

Hist.: CCB 8-2006, f. & cert. ef. 9-5-06; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-003-0450

License Fitness Standards

(1) In considering whether to sanction an applicant or licensee pursuant to ORS 701.098(1)(h)(A)-(I), the agency shall consider whether the applicant's or licensee's criminal conduct is substantially related to the fitness and ability of the applicant or licensee to engage in construction contracting.

(2) Fitness to engage in construction contracting includes, but is not limited to the ability to:

(a) Refrain from violent, threatening, intimidating or sexually predatory behavior;

(b) Refrain from dishonest or fraudulent conduct; or

(c) Be financially responsible.

(3) Factors to be considered in denying or refusing to issue or renew a license include, but are not limited to, the date of the offense and the circumstances of the crime. In addition, factors relating to rehabilitation, or lack thereof, as evidenced by intervening events include, but are not limited to: failure to complete the criminal sentence, including probation or parole; failure to complete court ordered treatment; or failure to pay court ordered restitution.

(4) Upon notice and request from the Board, it will be the duty of an applicant or licensee to provide the requested information in order for the Board to conduct a criminal background check as authorized by 701.098(1)(h)(A)-(I). Requested information includes but is not limited to police reports, record of conviction, parole or probation reports, restitution records, counseling reports, and letters of recommendation.

(5) Failure to provide requested information in (4) of this section may result in the denial of a license.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.046 & 701.098

Hist.: CCB 3-2007, f. 4-24-07, cert. ef. 5-1-07; CCB 6-2007, f. 8-29-07, cert. ef. 9-1-07; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-004-0600

Payment From Surety Bond, Letter of Credit or Cash Deposit

(1) The agency may notify the surety company or financial institution of complaints pending.

(2) The agency must notify the surety company or financial institution of complaints ready for payment. This notice constitutes notice that payment is due on the complaints. A complaint is ready for payment when all of the following have occurred:

(a)(A) A final order was issued in a contested case and 30 days have elapsed to allow the respondent time to pay the order; or

(B) An arbitration award was issued and is ready for payment under OAR 812-010-0470 and 30 days have elapsed to allow the respondent time to pay the award;

(b) The agency has received no evidence that the respondent has complied with the award or final order;

(c) The agency has not granted a stay of enforcement of the final order or award pending judicial review by the Court of Appeals; and

(d) All other complaints filed against the respondent within the same 90-day filing period under ORS 701.150 have either been resolved, been closed or have reached the same state of processing as the subject complaint.

(3) Except as provided in section (5) of this rule, complaints related to a job that are satisfied from a surety bond, letter of credit or cash deposit must be paid as follows:

(a) If a surety bond, letter of credit or cash deposit was in effect when the work period began, payment must be made from that surety bond, letter of credit or cash deposit.

(b) If no surety bond, letter of credit or cash deposit was in effect when the work period began, but a surety bond, letter of credit or cash deposit subsequently became effective during the work period of the contract, payment must be made from the first surety bond, letter of credit or cash deposit to become effective after the beginning of the work period.

(c) A surety bond, letter of credit or cash deposit that is liable for a complaint under subsection (3)(a) or (b) of this rule is liable for all com-

plaints related to the job and subsequent surety bonds, letters of credit or cash deposits have no liability for any complaint related to the job.

(4) Except as provided in section (5) of this rule, if during a work period the amount of a surety bond, letter of credit or cash deposit is changed and a complaint is filed relating to work performed during that work period, the complainant may recover from the surety bond, letter of credit or cash deposit up to the amount in effect at the time the contract was entered into.

(5) If the respondent maintains multiple surety bonds, letters of credit or cash deposits, the following apply:

(a) If multiple surety bonds, letters of credit or cash deposits were in effect when the work period began, payment must be made from all surety bonds, letters of credit or cash deposits in effect.

(b) If no surety bond, letter of credit or cash deposit was in effect when the work period began, but multiple surety bonds, letters of credit or cash deposits subsequently became effective during the work period of the contract and the effective dates of the surety bonds, letters of credit or cash deposits are substantially the same, payment must be made from multiple surety bonds, letters of credit or cash deposits.

(c) Payment to satisfy a complaint made under section (5) of this rule from a surety bond, letter of credit or cash deposit must be in the same proportion that the penal sum of the surety bond, letter of credit or cash deposit bears to the total of the penal sums of the multiple surety bonds, letters of credit or cash deposits.

(d) For purposes of this rule, where the contractor holds an endorsement as a residential or commercial contractor, "multiple surety bonds" refers to either multiple residential surety bonds or multiple commercial surety bonds. "Multiple surety bonds" does not mean a combination of residential surety bonds and commercial surety bonds.

(6) If more than one complaint must be paid from a surety bond, letter of credit or cash deposit under section (3) of this rule or multiple surety bonds, letters of credit or cash deposits under section (5) of this rule and the total amount due to be paid exceeds the total amount available from those surety bonds, letters of credit or cash deposits payment on a complaint must be made in the same proportion that the amount due on that complaint bears to the total due on all complaints that must be paid.

(7) The full penal sum of a bond, letter of credit or cash deposit must be available to pay complaints under this rule, notwithstanding that the penal sum may exceed the bond, letter of credit or cash deposit amount required under OAR 812-003-0170 or 812-003-0171.

(8) Unless the order provides otherwise, if an award or a final order provides that two or more respondents are jointly and severally liable for an amount due to a complainant and payment is due from the surety bonds, letter of credit or cash deposit of the respondents, payment must be made in equal amounts from each bond, letter of credit or cash deposit subject to payment. If one or more of the bonds, letters of credit or cash deposits is or becomes exhausted, payment must be made from the remaining bond, letter of credit or cash deposit or in equal amounts from the remaining bonds, letters of credit or cash deposits. If one of the respondents liable on the complaint makes payment on the complaint, that payment shall reduce the payments required from that respondent's bond, letter of credit or cash deposit under this section by an amount equal to the payment made by the respondent.

(9) A surety company or financial institution may not condition payment of a complaint on the execution of a release by the complainant.

(10) Inactive status of the license of the respondent does not excuse payment by a surety company or financial institution required under this rule.

Stat. Auth.: ORS 670.310, 701.150 & 701.235

Stats. Implemented: ORS 701.150, 701.081, 701.084 & 701.088

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0075; 1BB 6-1984(Temp), f. & ef. 9-18-84; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0070; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2002(Temp), f. & cert. ef. 5-23-02 thru 11-19-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 5-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-005-0270

Duty to Submit Evidence of Management or Supervisory Authority

Upon request from the agency, a licensee must submit evidence to support compliance with the requirement that a responsible managing individual of the licensee exercises management or supervisory authority over

ADMINISTRATIVE RULES

the construction activities of the business as defined under ORS 701.005 and OAR 812-002-0265.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005 & 701.091

Hist.: CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-005-0800

Schedule of Penalties

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

(1) \$600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.026 and OAR 812-003-0120, which may be reduced to \$200 if the respondent becomes licensed or to \$50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and

(2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.026 and OAR 812-003-0120, when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(3) \$1,000 per offense for performing work as a contractor in violation of ORS 701.026 when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent becomes licensed within a specified time; and

(4) \$5,000 per offense for performing work as a contractor in violation of ORS 701.026, when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to \$700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner; and

(5) \$5,000 per offense for performing work as a contractor in violation of ORS 701.026, when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(6) \$500 per offense for failure to respond to the agency's request for the list of subcontractors required in ORS 701.345; and

(7) \$1,000 per offense for hiring an unlicensed subcontractor; and

(8) For failing to provide an "Information Notice to Owners about Construction Liens" as provided in ORS 87.093, when no lien has been filed, \$200 for the first offense, \$400 for the second offense, \$600 for the third offense, \$1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, \$1,000.

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0120: First offense \$100, second offense \$200, subsequent offenses \$400.

(10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0260: First offense \$50, second offense \$100, subsequent offenses \$200.

(11) Failure to use a written contract as required by ORS 701.305, \$200; when a claim has been filed, \$400; second and subsequent offenses, \$1,000.

(12) Violation of ORS 701.330, failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.

(13) Failure to conform to information provided on the application in violation of ORS 701.046(4), issuance of a \$5,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application and the terms of the application.

(a) If the violator is a limited contractor or residential limited contractor working in violation of the conditions established pursuant to OAR 812-003-0130 or 812-003-0131, the licensee shall be permanently barred from licensure in the limited contractor category or residential limited contractor endorsement.

(b) If the violator is a licensed developer, residential developer or commercial developer working in violation of the conditions established pursuant to ORS 701.005(3), (6) or (13) or 701.042, the licensee shall be permanently barred from licensure in the licensed developer category or residential developer or commercial developer endorsement.

(14) Knowingly assisting an unlicensed contractor to act in violation of ORS chapter 701, \$1,000.

(15) Failure to comply with any part of ORS chapters 316, 656, or 657, 701.035, 701.046 or 701.091, as authorized by ORS 701.106, \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.

(16) Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.

(17) Working without a construction permit in violation of ORS 701.098, \$1,000 for the first offense; \$2,000 and suspension of CCB license for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

(18) Failure to comply with an investigatory order issued by the Board, \$500 and suspension of the license until the contractor complies with the order.

(19) Violation of ORS 701.098(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000, suspension of the license or both; second and subsequent offenses, \$5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(20) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

(b) Violating the federal Davis-Bacon Act; or

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

(d) Failing to comply with the payroll certification requirements of ORS 279C.845; or

(e) Failing to comply with the posting requirements of ORS 279C.840:

\$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(21) Violation of ORS 701.098(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) or (20), where more than two violations have occurred: \$5,000 and revocation of the license.

(22) When, as set forth in ORS 701.098(1)(g), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under ORS 701.035(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: \$1,000 for the first offense, \$2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

(23) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

(24) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): \$5,000.

(25) Failure to conform to the Standards of Practice in violation of OAR 812-008-0202 through 812-008-0214: \$750 per offense.

(26) Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)-(8): \$750 per offense.

(27) Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: \$5,000 per offense.

(28) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0201(4): \$400 per offense.

(29) Violation of work practice standards for lead-based paint activity pursuant to OAR 812-007-0070; \$5,000 per violation and suspension of the lead-based paint business endorsement for up to one year.

(30) Violation of ORS 279C.590:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to

ADMINISTRATIVE RULES

one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(31) Violation of ORS 701.315, inclusion of provisions in a contract that preclude a homeowner from filing a breach of contract complaint with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(32) Violation of ORS 701.345, failure to maintain the list of subcontractors: \$1,000 for the first offense; \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(33) Violation of 701.098(1)(e), knowingly providing false information to the Board: \$1,000 and suspension of the license for up to three months for the first offense; \$2,000 and suspension of the license for up to one year for the second offense; and \$5,000 and permanent revocation of license for the third offense.

Stat. Auth.: ORS 183.310 - 183.500, 670.310, 701.235 & 701.992
Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.026, 701.042, 701.046, 701.091, 701.098, 701.106, 701.227, 701.315, 701.305, 701.330, 701.345, 701.992
Hist.: 1BB 4-1982, f. & cert. 10-7-82; 1BB 1-1983, f. & cert. 3-1-83; Renumbered from 812-011-0080(13); 1BB 3-1983, f. 10-5-83, cert. 10-15-83; 1BB 3-1984, f. & cert. 5-11-84; 1BB 3-1985, f. & cert. 4-25-85; BB 1-1987, f. & cert. 3-5-87, BB 1-1988(Temp), f. & cert. ef. 1-26-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cert. ef. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 4-1992, f. & cert. ef. 6-1-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2000(Temp), f. & cert. ef. 11-13-00 thru 5-11-01; CCB 2-2001 f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 1-2002(Temp), f. & cert. ef. 3-1-02 thru 8-26-02; CCB 2-2002, f. & cert. ef. 3-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 5-2005, f. 8-24-05, cert. ef. 1-1-06; ; Renumbered from 812-005-0005, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 2-2006, f. & cert. ef. 1-26-06; CCB 7-2006, f. & cert. ef. 6-23-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 4-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 2-2008(Temp), f. & cert. ef. 1-2-08 thru 6-29-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-007-0040

Application Requirements

(1) No person, firm or public agency removing lead-based paint from or stabilizing lead-based paint in or on target housing and/or child-occupied facilities, shall conduct such activities without first applying to the Oregon Department of Human Services for and receiving a permit to conduct such activities and without first obtaining a license from the Construction Contractors Board to conduct such activities.

(2) An individual must do the following to qualify for a license.

(a) Submit an application on a form presented by the Construction Contractors Board together with the license fee and;

(b) Submit a copy of the certificate issued by the Oregon Department of Human Services showing that the individual is qualified to perform the activities.

(3) A firm must do the following to qualify for a license.

(a) Become licensed with the Construction Contractors Board as a residential general contractor, residential specialty contractor, commercial general contractor or commercial specialty contractor;

(b) Have as an owner or employee one or more individuals who have obtained a license from the Construction Contractors Board to perform the activities;

(c) Submit an application on a form prescribed by the Construction Contractors Board together with the fee payment and;

(d) Submit a copy of the certificate issued by the Oregon Department of Human Services showing that the firm is qualified to conduct the activities.

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

Stat. Auth.: ORS 670.310, 701.235, 701.515
Stats. Implemented: ORS 701.081, 701.084, 701.515
Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0025, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-008-0030

Certification and License Required

(1) Except as provided in ORS 701.350(1) and section (3) of this rule, no individual shall undertake, offer to undertake or submit a bid to do work as an Oregon certified home inspector without first receiving certification to do same from the agency and without being an owner or employee of a business that is licensed with the agency.

(2) Except as provided in ORS 701.350(2) and section (3) of this rule, no business shall undertake, offer to undertake or submit a bid to do work as an Oregon certified home inspector without first becoming licensed with

the agency as a residential general contractor or residential specialty contractor, and without having an owner or employee who is an Oregon certified home inspector by the agency.

(3) No person, including persons listed in section (3)(b) of chapter 814, 1997 Oregon Laws as being exempt from ORS 701.350(1) and (2), shall use the title Oregon certified home inspector without receiving such certification from the agency.

(4) Certified individuals and licensed business undertaking certified home inspections shall comply with the standards of practice for undertaking certified home inspections as prescribed in these rules.

(5) All certificates to undertake home inspections are renewable upon meeting all requirements, including continuing education, as established by OAR chapter 812.

Stat. Auth.: ORS 670.310, 701.235, 701.350, 701.355

Stats. Implemented: ORS 701.081, 701.084, 701.350, 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

812-008-0040

Application Requirements and Eligibility Requirements

(1) An individual must submit the following to qualify for certification:

- An application on a form provided by the agency;
- The fee established in OAR 812-008-0110;
- If applicable, CCB number and name of employing licensee;
- Proof of minimum of 20 education points as set forth in sections (3) and (4) of this rule; and

(2) Evidence of successful passage of agency's test.

(2) A business must do the following to qualify for a license:

(a) Become licensed with the agency as a residential general contractor or residential specialty contractor;

(b) Have as an owner or employee one or more individuals who have obtained a certificate from the agency to undertake certified home inspections;

(c) Submit an application on a form prescribed by the agency; and

(d) Submit the fee as prescribed in OAR chapter 812.

(3) In order to qualify to take the test, an applicant must provide the agency with acceptable documentation that the applicant has accumulated a minimum of 20 education points from the following choices:

(a) Ten points for a completed, 3-credit hour minimum class with a passing grade in home inspection at an accredited college or university, (10 points maximum).

(b) One point for each completed 3-hour minimum class with a passing grade in construction, remodeling, engineering, architecture, building design, building technology, or real estate at an accredited college or university, (10 points maximum).

(c) One point for each completed "ride-along" inspection performed under the direct supervision of an Oregon certified home inspector, (10 points maximum).

(d) One point for each completed 3-hour minimum class with a passing grade in approved subject areas in OAR 812-008-0074(1) by approved education providers under 812-008-0074(2) that are not colleges or universities, (10 points maximum).

(4) The applicant may substitute the following experiences for all or part of the education requirements in OAR 812-008-0040(3):

(a) Four points for each completed 12 months legally working as a home inspector in Oregon or another state or country (16 points maximum).

(b) Two points for each completed 12 months working or teaching at an accredited college or university, trade school or private business for monetary compensation in construction, remodeling, engineering, architecture, building design, building technology, real estate, or building inspections (16 points maximum).

(c) One-half point for each letter of recommendation from an Oregon-certified home inspector (4 points maximum).

(d) One point for each building codes certification issued by a government agency (5 points maximum).

Stat. Auth.: ORS 670.310, 701.235, 701.350, 701.355

Stats. Implemented: ORS 701.081, 701.084, 701.350, 701.355

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 2-1999, f. & cert. ef. 5-4-99; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 2-2000, f. 2-25-00, cert. ef. 3-1-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 12-2000(Temp), f. & cert. ef. 10-16-00 thru 4-13-01; CCB 14-2000, f. & cert. ef. 12-4-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 7-2001(Temp), f. & cert. ef. 10-31-01 thru 4-29-02; CCB 3-2002, f. & cert. ef. 3-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 14-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 7-2007, f. 12-13-07, cert. ef. 1-1-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08

ADMINISTRATIVE RULES

Department of Administrative Services Chapter 125

Rule Caption: Amend and renumber Surplus Property Administrative Rules from Division 246 to Division 50. Adopt one new rule.

Adm. Order No.: DAS 2-2008

Filed with Sec. of State: 2-27-2008

Certified to be Effective: 2-29-08

Notice Publication Date: 2-1-2008

Rules Adopted: 125-050-0200

Rules Ren. & Amend: 125-246-0700 to 125-050-0100, 125-246-0710 to 125-050-0300, 125-246-0720 to 125-050-0310, 125-246-0730 to 125-050-0400

Subject: Amend DAS Surplus Property Rule to reflect current business practices and remove old, non-viable practices. To renumber and place rules where they are easier for customers to find. Adopt one new rule.

Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

125-050-0100

State Surplus Property Definitions

In addition to the definitions contained in ORS 279A.250 and OAR 125-246-0110, the following definitions apply to these Rules on State Surplus Property:

(1) "Bid" means a competitive Offer to purchase advertised Surplus Property at a price specified by the bidder.

(2) "Cash" includes U.S. currency, cashier's checks, certified checks, traveler's checks, money orders made payable to the State of Oregon, or approved credit cards.

(3) "Direct Labor" includes all Work required for preparation, production, processing and packing, but does not include supervision, administration, inspection and shipping.

(4) "Employee's Household" means all persons residing with employee.

(5) "Employee's Immediate Family" means the children, step-children, parents, step-parents, grandparents and spouse of employee, separately or in any combination thereof.

(6) "Invitation to Bid" means a competitive Offer to bid on Surplus Property available for public sale and is also known as a bid advertisement.

(7) "Not-for-profit organization" is defined in ORS 279A.250(2) and means a nonprofit corporation as defined in ORS 307.130.

(8) "Photographic Identification" means a document that shows the bearer's current name, address, and photographic portrait.

(9) "Political Subdivision" includes divisions or units of Oregon local government having separate autonomy such as Oregon counties, cities, municipalities or other public corporate entities having local governing authority.

(10) "Private Not-for-Profit Agencies" means those Agencies meeting the criteria specified in the Oregon Administrative Rules.

(11) "Property" is defined in ORS 279A.250(3) and means personal property.

(12) "State agency" is defined in ORS 279A.250(4) and means every state officer, board, commission, department, institution, branch or agency of state government whose costs are paid wholly or in part from funds held in the State Treasury, and includes the Legislative Assembly and the courts, including the officers and committees of both, and the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(13) "Surplus Property" means all personal property, vehicles and titled equipment property received by the Department as surplus from federal government units, state agencies, local governments, and special government bodies for sale to state agencies, political subdivisions of the State, and private not-for-profit organizations or the general public or any combination thereof.

Stat. Auth.: ORS 283.060, 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.250

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; Renumbered from 125-246-0700, DAS 2-2008, f. 2-27-08, cert. ef. 2-29-08

125-050-0200

Disposition and Accounting of State Owned Property

State Agencies shall follow Oregon Accounting Manual Policy 15.55.00.PO or other state policy when removing, transferring, recycling,

scrapping or otherwise disposing of Property in their possession that was purchased with state funds.

Stat. Auth.: ORS 279A.260(f), 279A.070

Stats. Implemented: ORS 279A.260

Hist.: DAS 2-2008, f. 2-27-08, cert. ef. 2-29-08

125-050-0300

Eligibility of State Agencies, Political Subdivisions and Non-Profit Organizations

Prior to offering Surplus Property for public sale, the State Surplus Property Program must make Surplus Property available to the following:

(1) State Agencies;

(2) Political subdivisions of the State; and

(3) Any non-profit organization qualified to acquire federal donation property pursuant to OAR 125-035-0045 or determined by the Department to be eligible under criteria established by the Department.

Stat. Auth.: ORS 283.060, 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.260

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; Renumbered from 125-246-0710, DAS 2-2008, f. 2-27-08, cert. ef. 2-29-08

125-050-0310

State Surplus Property Acquisition

(1) Recipients of state Surplus Property must have funds available at the time property is acquired, and pay all costs and charges incidental to the acquisition within thirty (30) calendar Days from the date of invoice. Invoices outstanding in excess of ninety (90) Days may result in suspension of purchasing privileges until such invoices have been paid in full.

(2) Surplus state property must be available for warehouse floor sale or direct transfer to state Agencies, political subdivisions and qualified non-profit organizations prior to public sale. Non-qualifying private entities and private citizens, separately or combined, must not be eligible to acquire surplus state property except at public sales.

(3) State Surplus Property acquired by state agencies, political subdivisions, or qualified not-for-profit organizations through warehouse floor sales or direct transfers must be used only in the conduct of their official public programs. State Surplus Property must not be acquired through warehouse floor sales or direct transfer for any use or purpose other than conduct of their official public programs, and not for resale or distribution unless otherwise pre-approved by the Department.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.260, 279A.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; Renumbered from 125-246-0720, DAS 2-2008, f. 2-27-08, cert. ef. 2-29-08

125-050-0400

Public Sales for Disposal of State Surplus Personal Property

(1) Conduct. The Department must conduct public sales for the disposal of state Surplus Property. Methods of disposal may include, but not be limited to: internet auctions, oral auctions, sealed bid sales and fixed price retail sales, separately or in any combination thereof.

(2) Eligibility. Members of the general public may participate as buyers at public sales. No employee whether full-time, part-time, temporary or unpaid volunteer, of the Department, member of the employee's household, the employee's immediate family, or any person acting on the employee's behalf may participate in public sales if the employee has had any role in declaring the item surplus, processing the item or related paperwork, or offering it for sale. No employee of the Property Distribution Center's programs, or members of the employee's immediate family, or any person acting on the employee's behalf, may purchase items offered through any public sales regardless of whether such employee had a role in declaring the item surplus, in processing the item, or in offering it for sale.

(3) Public Sales:

(a) Auctions: The Department may offer Surplus Property for public sale through an Internet auction provider, by public outcry auctions and by sealed bid auctions.

(A) Internet Auctions:

(i) Public bidding terminals may be made available during posted public hours at the Department's Property Distribution Center. The public may inspect Property offered for sale at the time and place specified in the public Invitation to Bid;

(ii) The Department reserves the right to reject any and all bids regarded as not in the best interests of the State;

(iii) All items must be sold to the highest bidder.

(B) Public Outcry and Sealed Bid Auctions:

(i) The Department must advertise the date, time and location of public auction or sealed bid sales. A public Invitation to Bid must be available at the Property Distribution Center or auction site one week before an auc-

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tion or sealed bid sale. The public may inspect property offered for sale at the time and place specified in the public Invitation to Bid;

(ii) The Department reserves the right to reject any and all bids regarded as not in the best interests of the State;

(iii) All items must be sold to the highest bidder;

(C) Terms and Conditions Regarding Advertisement of Auction Property;

(i) Except as set forth in paragraph (v)(I) and (v)(II) of this section (3), all Property must be offered "As-Is" and "Where-Is" with no warranty or other guarantee as to its condition or fitness for any use or purpose;

(ii) Items purchased that were originally offered as "Working Condition Unknown" shall not be refunded except as described in paragraph (v)(I) and (v)(II) of this section.

(iii) Terms and conditions of the sale must be made a part of the Internet posting or auction advertisement. By bidding, a potential purchaser is confirming their acceptance of the terms and conditions as set forth and published in the posting.

(iv) A purchaser or disappointed bidder must have no recourse against the Department, Agency or any of their respective officers, employees or agents.

(v) Except as as set forth in (I) and (II) of this section, all sales must be final.

(I) The Department may offer to warranty items as to the accuracy of the item description as stated in the bid offering. The Department Surplus Property Manager may grant dispensation from completing the transaction before payment is made or offer full or partial refund if payment has been received. Any dispensation or refunds granted shall be at the sole discretion of the Department Surplus Property Manager.

(II) The Department may establish a return or refund policy for items where the buyer does not wish to retain or pick up items which have been fully paid for. The Department may establish a re-stocking fee equal to a percentage of the original purchase price of the item and/or a flat fee. Fees and limits will be set by the Department Surplus Property Manager, published in Department Surplus Property Program policy, published on the program's Website and shall be determined in correlation with sales expenses.

(b) Fixed Price Public Sales: The Department may establish sales of personal property directly to the public at a fixed price. Every effort must be made to ensure direct sales are fair and equitable.

(4) Payment:

(a) For Internet Auctions, full payment must be made within the time specified in the public Invitation to Bid or otherwise established in program policy.

(b) For Public Outcry and Sealed Bid Auctions, the time limit for making full payment, and the place where payment must be made will be specified in the Invitation to Bid;

(c) The Department reserves the right, in its absolute discretion, to refuse any tender of payment by personal check and, further, the right to require that payment be made by designated credit cards, cash, cashier's check, bank wire transfer or money order;

(d) The Department reserves the right to collect and retain the name, address and phone number of the buyer as a condition for completion of the sales transaction. The Department may require the buyer to sign the bill of sale as acceptance of the terms and conditions for the sale as set forth in the bid offering and published policies. The Department shall not sell or otherwise disperse sale information beyond fulfillment of a duly submitted public records request under ORS 192. All record of sales, including the buyer's name, address and phone number shall be secured and destroyed according to established record retention guidelines and policies.

(5) Claiming Items Purchased:

(a) Items not paid in full by the time specified in the sales terms and conditions must be canceled;

(b) Property paid for, but not claimed within the time specified in the sales terms and conditions shall be considered abandoned and ownership shall default to the State unless prior written approval is obtained by the purchaser is obtained from the Department;

(c) Title to Property sold must be transferred to the purchaser when full and final payment is made, unless otherwise specified by the Department. For vehicles, receipt of payment of the sale price and delivery of key to the purchaser constitutes delivery and possession. Titles to vehicles must be transferred upon receipt of full payment. The Department rejects any liability once a purchaser takes possession of a vehicle;

(d) Motor Vehicles Division trip permits are required to drive unlicensed motor vehicles within the state of Oregon and must be available at the Property Distribution Center. A purchaser of a vehicle must certify that

the driver of the vehicle has a valid driver's license and is insured as required by Oregon law before a trip permit can be issued. A representative of the program shall explain the requirements for trip permits and facilitate the purchasing of a trip permit to all vehicle purchasers. Should the vehicle purchaser refuse, the Department may require the purchaser sign a waiver documenting the offer and refusal.

(6) Failure to Comply. The Department may establish criteria to debar participants from auctions and other state sales pursuant to this Rule. Such criteria must be based on:

(a) Conviction of fraud;

(b) Unsatisfactory Internet auction service ratings;

(c) Failure to claim purchases; or

(d) Other documented activities determined by the Department to warrant debarment. Based upon these criteria, the Department may debar participants from auctions and participation in other state sales.

(d) The Department may, at its sole discretion, reinstate disbarred participants. The Department may charge a reinstatement fee to recover revenues lost due to the disbarred participant's prior actions.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070

Stats. Implemented: ORS 279A.280

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; Renumbered from 125-246-0730, DAS 2-2008, f. 2-27-08, cert. ef. 2-29-08

Department of Administrative Services, Human Resource Services Division Chapter 105

Rule Caption: Establishes methods of providing veterans and disabled veterans with preference in employment with the State.

Adm. Order No.: HRSD 1-2008

Filed with Sec. of State: 2-27-2008

Certified to be Effective: 3-1-08

Notice Publication Date: 2-1-2008

Rules Adopted: 105-040-0015

Rules Repealed: 105-040-0015(T)

Subject: Establishes manner in which State of Oregon agencies provide preference points to qualifying veterans and disabled veterans in scored employment examination processes and establishes manner in which preference is provided to qualifying veterans and disabled veterans in un-scored employment examinations processes. Designates methods used by state agencies to provide preference to veterans and disabled veterans in different selection processes including application examinations, interviews and final hiring decision. Specifies process by which veteran or disabled veteran may request and receive a written explanation for a decision not to appoint the veteran or disabled veteran applicant.

Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

105-040-0015

Veteran's Preference in Employment

Applicability: Recruitment and selection processes for all State of Oregon positions in agencies subject to ORS 240, State Personnel Relations Law, including but not limited to promotional opportunities.

(1) Definitions: (see also HRSD Rule 105-010-0000 Definitions Applicable Generally to Personnel Rules and Policies)

(a) Initial Application Screening: An agency's process of determining whether an applicant meets the minimum and special qualifications for a position. An Initial Application Screening may also include an evaluation of skills or grading of supplemental test questions if required on the recruiting announcement.

(b) Application Examination: The selection process utilized by an agency after Initial Application Screening. This selection process includes, but is not limited to, formal testing or other assessments resulting in a score as well as un-scored examinations such as interviews and reference checks.

(c) Veteran and Disabled Veteran: As defined by ORS 408.225 and 408.235.

(2) Application of preference points upon Initial Application Screening: Qualifying Veterans whose discharge date is less than 15 years from the date of State employment application and Disabled Veterans are provided with preference points as follows;

(a) Five Veteran's Preference points are added upon Initial Application Screening when an applicant submits as verification of eligibility a copy of the Certificate of Release or Discharge from Active Duty (DD Form 214 or 215) with the State of Oregon Application; or

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(b) Ten Disabled Veteran's points are added upon Initial Application Screening when an applicant submits as verification of eligibility a copy of the Certificate of Release or Discharge from Active Duty (DD Form 214 or 215) with the State of Oregon Application. Disabled Veterans must also submit a copy of their Veteran's disability preference letter from the Department of Veteran Affairs, unless the information is included in the DD Form 214 or 215.

(c) Veteran's and Disabled Veteran's preference points are not added when a Veteran or Disabled Veteran fails to meet the minimum or the special qualifications for a position.

(3) Following an Initial Application Screening the agency generates a list of qualified applicants to consider for Appointment. An Appointing Authority or designee may then:

(a) Determine whether or not to interview all applicants who meet the minimum and special qualifications of the position (including all Veterans and Disabled Veterans); or

(b) Select a group of Veteran and Disabled Veteran applicants who most closely match the agency's purposes in filling the position. This group of applicants may be considered along with non-veteran applicants who closely match the purposes of the agency in filling the position as determined by:

(A) Scored Application Examinations (including scored interviews): If an agency utilizes, after an Initial Application Screening, a scored Application Examination to determine whom to consider further for Appointment, the agency will add (based on a 100-point scale) five points to a Veteran's score or 10 points to a Disabled Veteran's score or;

(B) Un-scored Application Examinations: Un-scored Application Examinations done by sorting into levels (such as "unsatisfactory," "satisfactory," "excellent") based on desired attributes or other criteria for further consideration will be accomplished by:

- (i) Advancing the application of a Veteran one level;
- (ii) Advancing an application of a Disabled Veteran two levels.

(4) Preference in un-scored interviews: A Veteran or Disabled Veteran who, in the judgment of the Appointing Authority or designee, meets all or substantially all of the agency's purposes in filling the position will continue to be considered for Appointment.

(5) If a Veteran or Disabled Veteran has been determined to be equal to the top applicant or applicants for a position by the Appointing Authority or designee then the Veteran or Disabled Veteran is ranked more highly than non-veteran applicants and, a Disabled Veteran is ranked more highly than non-veteran and Veteran applicants.

(6) Preference described in Sections 2 through 5 of this rule is not a requirement to appoint a Veteran or Disabled Veteran to a position. An agency may base a decision not to appoint the Veteran or Disabled Veteran solely on the Veteran's or Disabled Veteran's merits or qualifications.

(7) Veteran or a Disabled Veteran applicant not appointed to a position may request an explanation from the agency. The request must be in writing and be sent within 30 calendar days of the date the Veteran or Disabled Veteran was notified that they were not selected. The agency will respond in writing with the reasons for not appointing the Veteran or Disabled Veteran.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth: ORS 240.145(3), 240.250
Stats. Implemented: ORS 408.225, 408.230, 408.235
Hist.: HRSD 3-2007(Temp), f. & cert ef. 9-5-07 thru 3-3-08; HRSD 1-2008, f. 2-27-08, cert. ef. 3-1-08

Department of Administrative Services, Oregon Educators Benefit Board Chapter 111

Rule Caption: Establishes eligibility coverage under the Oregon Educators Benefit Board.

Adm. Order No.: OEBB 4-2008

Filed with Sec. of State: 2-19-2008

Certified to be Effective: 2-19-08

Notice Publication Date: 1-1-2008

Rules Adopted: 111-015-0001

Subject: Establishes eligibility coverage under the Oregon Educators Benefit Board.

Rules Coordinator: Rose Mann—(503) 378-4606

111-015-0001

Eligible Individuals

(1) Unless otherwise defined under a separate OEBB administrative rule or a collective bargaining agreement or formal district-wide policy in

effect on July 1, 2007, the following individuals are eligible to participate in OEBB-sponsored benefit plans:

- (a) An eligible employee as defined in OAR 111-010-0015;
- (b) A spouse or domestic partner as defined by OAR 111-010-0015;
- (c) A dependent child as defined by OAR 111-010-0015.

(2) Collective bargaining agreements and district-wide policies scheduled to become effective on or after February 1, 2008, with a definition different than OAR 111-010-0015 must receive written authorization from the OEBB Board prior to finalization.

Stat. Auth.: ch.7, OL 2007
Stats. Implemented: Sec.1, ch. 7, OL 2007
Hist.: OEBB 4-2008, f. & cert. ef. 2-19-08

Department of Agriculture Chapter 603

Rule Caption: Creation of a Potato Disease control area in northern Union County.

Adm. Order No.: DOA 10-2008

Filed with Sec. of State: 2-28-2008

Certified to be Effective: 2-28-08

Notice Publication Date: 12-1-2007

Rules Adopted: 603-052-0395

Subject: The proposed rule would establish a potato disease control area in northern Union county. Its purpose would be to protect the seed potato industry in northern Union County from the introduction and spread of potato diseases, including viruses and pests. Seed potatoes entering the area would have to be controlled. Farm equipment used for potatoes would have to be cleaned prior to entering the control area.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0395

Union County Potato Disease Control Area and Procedures

(1) As authorized by ORS 570.305 and 570.405, a control area is established for the protection of the seed potato industry in Union County against the introduction and spread of potato diseases, including viruses and pests. Such area includes all of Union County, Oregon north of the Craig Mountain Range: i.e. all of Union County north of a west to east line starting at the intersection of the Western border of Union County and the northern border of T4S R34E sec 34 and continuing due east to the eastern border of Union County at the northern border of T4S R43E sec 31.

(2) The following methods are to be used in the control area described in section (1) of this rule for the control of potato diseases and pests within the control area and to prevent the introduction of such diseases and pests into Union County:

(a) All potato seed imported into the control area shall have a Federal-State Shipping Point inspection and certification prior to entering the control area;

(b) All potatoes planted in the control area for the purpose of producing seed quality or commercial potatoes shall meet the minimum disease tolerances of OSU Potato Seed Certification Standards for generation 2 (field year 3) stock and must be eligible for re-certification in the growing area based upon a winter grow-out test. All production larger in scope than a home garden (potatoes not grown for re-sale in commercial markets are considered home garden or noncommercial potato production) must be entered into the OSU Seed Certification Program as a seed production field or into the Un-certified Field Inspection Program as a commercial production field;

(c) All potato seed sold in the control area for the purpose of home garden or noncommercial potato production shall be of a quality that meets the minimum requirements of the Oregon State University potato seed certification standards for Oregon G4 or earlier generations;

(d) All cull potatoes accumulated at the time potatoes are dug and moved into storage shall be destroyed within 30 days, and all cull potatoes accumulated during shipment process shall also be destroyed within 30 days;

(e) Diseases, such as potato late blight, or viruses vectored by aphids require preventative management. Therefore, appropriate control measures are required throughout the growing season to prevent late blight infection or buildup of insects that vector viruses. Specific ways to prevent these problems require using widely accepted methods such as found in the Pacific Northwest Disease/Insect Management Handbooks, or as recommended by local experts in disease/insect control.

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(f) All farm equipment related to potato production (used to till and level farm ground or handle potatoes), must be steam cleaned or power washed to remove all soil and plant debris before entering the control area.

(3) Potatoes in transit through the control area shall be in containers or vehicles covered or sealed to prevent lost of tubers or soil.

(4) Destruction of volunteer potatoes. Each grower within the control area is responsible for destroying volunteer potatoes growing on summer fallow, set-aside, non-cultivated, and rotational crop areas of the grower's property. In the event that the grower fails to destroy such plants, the Director may order them destroyed at the expense of the grower. Volunteers in rotation crops should be controlled in the best way possible.

(5) Potatoes in home gardens may be subject to inspection by the Oregon Department of Agriculture should the need arise, and effective control measures shall be taken if necessary.

(6) Any violation of this rule shall be deemed to be a violation of ORS 570.410 and subject the violator to the penalty provisions of ORS 570.990 and 570.995, including civil penalties of up to \$10,000. Additionally, any potato seed found to be in violation of this rule shall be destroyed or disposed of in a manner prescribed by the Department. The grower shall pay the cost of destruction.

Stat. Auth.: ORS 561.190, 570.305 & 570.405

Stats. Implemented: ORS 571.057

Hist.: DOA 10-2008, f. & cert. ef. 2-28-08

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Rule Caption: Adds two weeds to weed quarantine, modifies restrictions on English ivy, butterfly bush, Scotch broom.

Adm. Order No.: DOA 11-2008

Filed with Sec. of State: 3-7-2008

Certified to be Effective: 3-7-08

Notice Publication Date: 12-1-2007

Rules Amended: 603-052-1200

Subject: The proposed amendment to the noxious weed quarantine (603-052-1200) would update the list of prohibited plants. Two new weeds, parrots feather (*Myriophyllum aquaticum*) and perennial peavine (*Lathyrus latifolius*) would be added to the list. restrictions would be added for English ivy (*Hedera helix/hibernica*), butterfly-bush (*Buddleia davidii/varabilis*), and Scotch broom, (*Cytisus scoparius*). After December 31, 2009, these plants will be completely banned. These changes would bring the noxious weed quarantine in line with the State Noxious Weed List maintained by the State Weed Board.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-1200

Quarantine; Noxious Weeds

(1) Establishing Quarantine. A quarantine is established against the noxious weeds listed herein. Noxious weeds have become so thoroughly established and are spreading so rapidly that they have been declared a menace to the public welfare. ORS 570.505.

(2) Areas Under Quarantine. The entire state of Oregon and all other States of the United States and all foreign countries.

(3) Covered Plants. For purposes of this rule the term "plants" applies to whole plants, plant parts, and seeds. This rule applies to all "A" and "B" designated noxious weeds listed herein, except as provided in subsections (c) and (d). Plants on the *Federal Noxious Weed List* (7 C.F.R. 360.200) are also covered by this rule, with the exception of Japanese blood grass, *Imperata cylindrica*, var. Red Baron and Chinese water spinach, *Ipomoea aquatica*.

(a) "A" designated weeds. Weeds of known economic importance which occur in the state in small enough infestations to make eradication/containment possible; or which are not known to occur, but their presence in neighboring states makes future occurrence in Oregon seem imminent.

(A) African rue — *Peganum harmala*;

(B) Camelthorn — *Alhagi pseudalhagi*;

(C) Coltsfoot — *Tussilago farfara*;

(D) Cordgrasses:

(i) Common — *Spartina anglica*;

(ii) Dense-flowered — *Spartina densiflora*;

(iii) Saltmeadow — *Spartina patens*;

(iv) Smooth — *Spartina alterniflora*.

(E) European water chestnut — *Trapa natans*;

(F) Giant hogweed — *Heracleum mantegazzianum*;

(G) Goatgrasses:

(i) Barbed — *Aegilops triuncialis*;

(ii) Ovate — *Aegilops ovata*.

(H) Hawkweeds:

(i) King-devil — *Hieracium piloselloides*;

(ii) Meadow — *Hieracium pratense*;

(iii) Mouse-ear — *Hieracium pilosella*;

(iv) Orange — *Hieracium aurantiacum*;

(v) Yellow — *Hieracium floribundum*.

(I) Hydrilla — *Hydrilla verticillata*;

(J) Kudzu — *Pueraria lobata*;

(K) Matgrass — *Nardus stricta*;

(L) Paterson's curse — *Echium plantagineum*;

(M) Purple nutsedge — *Cyperus rotundus*;

(N) Silverleaf nightshade — *Solanum elaeagnifolium*;

(O) Skeletonleaf bursage — *Ambrosia tomentosa*;

(P) Squarrose knapweed — *Centaurea virgata*;

(Q) Starthistles:

(i) Iberian — *Centaurea iberica*;

(ii) Purple — *Centaurea calcitrapa*.

(R) Syrian bean-caper — *Zygophyllum fabago*;

(S) Texas blueweed — *Helianthus ciliaris*;

(T) Thistles:

(i) Plumeless — *Carduus acanthoides*;

(ii) Smooth distaff — *Carthamus baeticus*;

(iii) Woolly distaff — *Carthamus lanatus*.

(U) Yellow floating heart — *Nymphoides peltata*.

(b) "B" designated weeds. Weeds of economic importance which are regionally abundant, but which may have limited distribution in some counties.

(A) Austrian peaweed (Swainsonpea) — *Sphaerophysa salsula*;

(B) Bearded creeper (common crupina) — *Crupina vulgaris*;

(C) Biddy-biddy — *Acaena novae-zelandiae*;

(D) Brooms:

(i) French — *Genista monspessulana*;

(ii) Portuguese — *Cytisus striatus*;

(iii) Scotch — *Cytisus scoparius** (*except named horticultural varieties are permitted until December 31, 2009. After that date, all the prohibitions of section (4) (a-d) apply.);

(iv) Spanish — *Spartium junceum*;

(E) Buffalobur — *Solanum rostratum*;

(F) Butterfly bush — *Buddleia davidii/varabilis** (*Until December 31, 2009, plants are allowed to be imported and grown in licensed nurseries, but plants must not be allowed to go to seed including stock plants. Plants shall not be sold in the State of Oregon. After that date, all the prohibitions of section (4) (a-d) apply.);

(G) Common bugloss — *Anchusa officinalis*;

(H) Creeping yellow cress — *Rorippa sylvestris*;

(I) Cutleaf teasel — *Dipsacus laciniatus*;

(J) Dodder — *Cuscuta spp.** (*except northwest natives);

(K) Dyers woad — *Isatis tinctoria*;

(L) English ivy — *Hedera helix** (*Until December 31, 2009, plants that are intended for use as topiary, or in indoor /patio pots, baskets, or floral arrangements are allowed. Plants that are intended for use in outdoor landscaping plantings are prohibited. After that date, all the prohibitions of section (4) (a-d) apply.);

(M) Eurasian watermilfoil — *Myriophyllum spicatum*;

(N) False brome — *Brachypodium sylvaticum*;

(O) Field bindweed — *Convolvulus arvensis*;

(P) Garlic Mustard — *Alliaria petiolata*;

(Q) Giant horsetail — *Equisetum telmateia*;

(R) Gorse — *Ulex europaeus*;

(S) Halogeton — *Halogeton glomeratus*;

(T) Himalayan blackberry — *Rubus discolor** (R. aremeniacus & R. procerus) (*except fruit for consumption);

(U) Houndstongue — *Cynoglossum officinale*;

(V) Johnsongrass — *Sorghum halepense*;

(W) Jointed goatgrass — *Aegilops cylindrical*;

(X) Jubata grass — *Cortaderia jubata*;

(Y) Knapweeds:

(i) Diffuse — *Centaurea diffusa*;

(ii) Meadow — *Centaurea pratensis* (jacea x nigra);

(iii) Russian — *Acroptilon repens*;

(iv) Spotted — *Centaurea maculosa* (C. stoebe).

(Z) Knotweeds:

(i) Giant — *Polygonum sachalinense*;

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- (ii) Himalayan — *Polygonum polystachyum*;
- (iii) Japanese (fleece flower) — *Polygonum cuspidatum* (Fallopia japonica).
- (AA) Kochia — *Kochia scoparia*;
- (BB) Mediterranean sage — *Salvia aethiopsis*;
- (CC) Medusahead rye — *Taeniatherum caput-medusae*;
- (DD) Old man's beard — *Clematis vitalba*;
- (EE) Parrots Feather — *Myrophyllum aquaticum*;
- (FF) Perennial peavine — *Lathyrus latifolius*;
- (GG) Perennial pepperweed — *Lepidium latifolium*;
- (HH) Poison hemlock — *Conium maculatum*;
- (II) Policeman's helmet — *Impatiens glandulifera*;
- (JJ) Puncturevine — *Tribulus terrestris*;
- (KK) Purple loosestrife — *Lythrum salicaria*;
- (LL) Quackgrass — *Agropyron repens*;
- (MM) Ragweed — *Ambrosia artemisiifolia*;
- (NN) Rush skeletonweed — *Chondrilla juncea*;
- (OO) Saltcedar — *Tamarix ramosissima*;
- (PP) Small broomrape — *Orobancha minor*;
- (QQ) South American waterweed (Elodea) — *Egeria* (Elodea) densa;
- (RR) Spikeweed — *Hemizonia pungens*;
- (SS) Spiny cocklebur — *Xanthium spinosum*;
- (TT) Spurges:
 - (i) Leafy — *Euphorbia esula*;
 - (ii) Myrtle — *Euphorbia myrsinites*.
- (UU) Sulfur cinquefoil — *Potentilla recta*;
- (VV) Tansy ragwort — *Senecio jacobaea*;
- (WW) Thistles:
 - (i) Bull — *Cirsium vulgare*;
 - (ii) Canada — *Cirsium arvense*;
 - (iii) Italian — *Carduus pycnocephalus*;
 - (iv) Musk — *Carduus nutans*;
 - (v) Scotch — *Onopordum acanthium*;
 - (vi) Slender-flowered — *Carduus tenuiflorus*.
- (XX) Toadflax:
 - (i) Dalmation — *Linaria dalmatica*;
 - (ii) Yellow — *Linaria vulgaris*.
- (YY) Velvetleaf — *Abutilon theophrasti*;
- (ZZ) Whitetops:
 - (i) Hairy — *Lepidium pubescens*;
 - (ii) Lens-podded — *Lepidium chalepensis*;
 - (iii) Whitetop (hoary cress) — *Lepidium draba*.
- (AAA) Yellow flag iris — *Iris pseudacorus*;
- (BBB) Yellow nutsedge — *Cyperus esculentus*;
- (CCC) Yellow starthistle — *Centaurea solstitialis*;
- (c) Agricultural seed as defined in Oregon's Seed Law, ORS 633.511 to 633.750, is exempt from this quarantine but subject to the noxious weed seed tolerances in OAR 603-056-0205.
- (d) Other commodities such as but not limited to wheat are exempt from this quarantine to the extent that they are contaminated with noxious weed seed.
- (4) Prohibited and Permitted Acts.
 - (a) All plants covered in section (3) of this rule are prohibited entry into the State of Oregon.
 - (b) All plants listed in section (3) of this rule are prohibited from transport, purchase, sale or offering for sale in the State of Oregon.
 - (c) All plants listed in section (3) of this rule are prohibited from being propagated in the State of Oregon.
 - (d) All plants listed in section (3) may be collected from the wild in areas that are already infested with the specific species that is collected, provided that the plants, plant parts, or seed are not used for propagation or sale within the State of Oregon.
 - (5) Disposition of Plants in Violation of the Quarantine. All covered plants listed in section (3) of this rule are found to be in violation of this quarantine shall be returned immediately to point of origin by the Oregon receiver, if from out of state, or at the owner's option be destroyed under the supervision of the department, without expense to or indemnity paid by the department.
 - (6) Exceptions. The director may issue a permit allowing entry into this state, propagation, or selling of plants covered by this rule, upon request, and upon investigation and finding that unusual circumstances exist justifying such action, and that the benefits of granting the permit outweigh the potential harm that may result from the requested action. The director may impose specific conditions on any permit issued hereunder, and the permit may be canceled for failure to meet the conditions therein.

Any permit issued under this section shall be for a limited duration not to exceed one year.

Stat. Auth.: ORS 561.020, 561.190, 561.510 & 570.305

Stats. Implemented: ORS 561.510

Hist.: DOA 5-1999, f. & cert. ef. 4-5-99; DOA 13-2000, f. & cert. ef. 5-8-00; DOA 7-2002, f. & cert. ef. 2-1-02; DOA 26-2002, f. & cert. ef. 12-10-02; DOA 27-2004, f. & cert. ef. 12-28-04; DOA 1-2006, f. & cert. ef. 1-13-06; DOA 2-2007, f. & cert. ef. 1-30-07; DOA 11-2008, f. & cert. ef. 3-7-08

Rule Caption: Implementing Enrolled SB 1079, that exempts gasoline from mandatory blending with ethanol for specific uses.

Adm. Order No.: DOA 12-2008(Temp)

Filed with Sec. of State: 3-14-2008

Certified to be Effective: 3-17-08 thru 9-12-08

Notice Publication Date:

Rules Amended: 603-027-0410, 603-027-0420, 603-027-0430, 603-027-0440, 603-027-0490

Subject: This temporary rule amends Oregon's motor fuel quality definitions, specifications, gasoline dispenser labeling requirements, storage tank labeling requirements, and enforcement proceedings to implement Enrolled Senate Bill (SB) 1079 that exempts gasoline from mandatory blending with 10% by volume ethanol for specific uses. These specific uses are 1) an aircraft under specific conditions; 2) an antique vehicle as defined in ORS 801.125; 3) a Class I all-terrain vehicle as defined in ORS 801.190; 4) a Class III all-terrain vehicle as defined in ORS 801.194; 5) a racing activity vehicle as defined in ORS 801.404; 6) a snowmobile as defined in ORS 801.490; 7) tools, including but not limited to lawn mowers, leaf blowers, and chain saws; or 8) watercraft. Failure to act immediately will result in serious prejudice to the public interest and safety. By adopting this temporary administrative rule quickly, this allows people to purchase non-ethanol blended gasoline in a timely manner for their equipment that qualify for the specific exemptions.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-027-0410

Definitions

(1) "Alcohol" means a volatile flammable liquid having the general formula $C_nH_{(2n+1)}OH$ used or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

(2) "ASTM" means ASTM International, the national voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services; and the promotion of related knowledge. ASTM when used in these rules shall mean the 2008 Annual Book of ASTM Standards, Section 5, Volumes 05.01 through 05.05.

(3) "Antiknock Index (AKI)" means the arithmetic average of the Research Octane Number (RON) and Motor Octane Number (MON): $AKI=(RON+MON)/2$. This value is called by a variety of names, in addition to antiknock index, including: Octane Rating, Posted Octane, (R+M)/2 Octane.

(4) "Automotive Fuel Rating" means the automotive fuel rating determined under 16 CFR 306.5, required to be certified under 16 CFR 306.6 and 16 CFR 306.8, and required to be posted under 16 CFR 306.10. Under this Rule, sellers of liquid automotive fuels, including alternative fuels, must determine, certify, and post an appropriate automotive fuel rating. The automotive fuel rating for gasoline is the antiknock index (octane rating). The automotive fuel rating for alternative liquid fuels consists of the common name of the fuel along with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel. For alternative liquid automotive fuels, a disclosure of other components, expressed as a minimum percentage by volume, may be included, if desired.

(5) "Automotive Gasoline, Automotive Gasoline-Oxygenate Blend" means a type of fuel suitable for use in spark-ignition automobile engines and also commonly used in marine and non-automotive applications.

(6) "Aviation Gasoline" means a type of gasoline suitable for use as a fuel in an aviation gas spark-ignition internal combustion engine.

(7) "Bulk Facility" means a facility, including pipelines terminals, refinery terminals, rail and barge terminals and associated underground and above ground tanks connected or separate, from which motor vehicle fuels are withdrawn from bulk and delivered to retail, wholesale or nonretail facilities or into a cargo tank or barge used to transport those products.

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(8) "Base Gasoline" means all components other than ethanol in a blend of gasoline and ethanol.

(9) "Biomass" means organic matter that is available on a renewable or recurring basis and that is derived from:

(a) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and reduce uncharacteristic stand replacing wildfire risk;

(b) Wood material from hardwood timber described in ORS 321.267(3);

(c) Agricultural residues;

(d) Offal and tallow from animal rendering;

(e) Food wastes collected as provided under ORS Chapter 459 or 459A;

(f) Yard or wood debris collected as provided under ORS Chapter 459 or 459A;

(g) Wastewater solids; or

(h) Crops grown solely to be used for energy, and

(i) Biomass does not mean wood that has been treated with creosote, pentachlorophenol, inorganic arsenic, or other inorganic chemical compounds.

(10) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100.

(11) "Biodiesel Blend" means a fuel comprised of a blend of biodiesel fuel with petroleum-based diesel fuel, designated BXX. In the abbreviation BXX, the XX represents the volume percentage of biodiesel fuel in the blend.

(12) "Cetane Index" means an approximation of the cetane number of distillate fuel, which does not take into account the effect of a cetane improver additive, calculated from the density and distillation measurements. (Ref. ASTM D 976.)

(13) "Cetane Number" means a numerical measure of the ignition performance of a diesel fuel obtained by comparing it to reference fuels in a standardized engine test. (Ref. ASTM D 613.)

(14) "Coordinating Research Council (CRC) Rating" means a standardized format for rating injector and engine deposits as developed by the CRC.

(15) "Co-solvent" means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.

(16) "Dealer" means any motor vehicle fuel retailer dealer, nonretail dealer or wholesale dealer.

(17) "Director" means the Director of Agriculture.

(18) "Diesel Fuel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine.

(19) "Distillate" means any product obtained by condensing the vapors given off by boiling petroleum or its products.

(20) "EPA" means the United States Environmental Protection Agency.

(21) "E85 Fuel Ethanol" means a blend of ethanol and hydrocarbons of which the ethanol portion is nominally 75 to 85 volume percent denatured fuel ethanol (Ref. ASTM D 5798).

(22) "Ethanol" also known as "Denatured Fuel Ethanol", means nominally anhydrous ethyl alcohol meeting ASTM D 4806 standards. It is intended to be blended with gasoline for use as a fuel in a spark-ignition internal combustion engine. The denatured fuel ethanol is first made unfit for drinking by the addition of Alcohol and Tobacco Tax and Trade Bureau (TTB) approved substances before blending with gasoline.

(23) "Ethanol facilities production capacity" means the designed and "as-constructed" rated capacity as verified by the Oregon Department of Agriculture, or the ethanol facilities production capacity as determined by an independent Professional Engineer registered in the State of Oregon that is not the design consultant and as verified by the Oregon Department of Agriculture.

(24) "Feedstock" means the original biomass used in biofuel production.

(25) "Fuel Injector Cleanliness" means a characteristic of the fuel which allows engine operation without fuel contribution to excessive injector deposits.

(26) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.

(27) "Gasoline-Oxygenate Blend" means a fuel consisting primarily of gasoline along with a substantial amount (more than 0.35 mass percent

oxygen, or more than 0.15 mass oxygen if methanol is the only oxygenate) of one or more oxygenates.

(28) "Lead Substitute" means an EPA-registered gasoline additive suitable, when added in small amounts to fuel, to reduce or prevent exhaust valve recession (or seat wear) in automotive spark-ignition internal combustion engines designed to operate on leaded fuel.

(29) "Lead Substitute Engine Fuel" means a gasoline or gasoline-oxygenate blend that contains a "lead substitute."

(30) "Low Temperature Operability" means a condition which allows the uninterrupted operation of a diesel engine through the continuous flow of fuel throughout its fuel delivery system at low temperatures.

(31) "Lubricity" means a qualitative term describing the ability of a fluid to affect friction between, and wear to, surfaces in relative motion under load.

(32) "Methanol" means methyl alcohol, a flammable liquid having the formula CH₃OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

(33) "M100 Fuel Methanol" means nominally anhydrous methyl alcohol, generally containing small amounts of additives, suitable for use as a fuel in a compression-ignition combustion engine.

(34) "M85 Fuel Methanol" means a blend of methanol and hydrocarbons of which the methanol portion is nominally 70 to 85 volume percent and which meets the requirements of ASTM D 5797.

(35) "Motor Octane Number" means a numerical indication of a spark-ignition engine fuel's resistance to knock obtained by comparison with reference fuels in a standardized ASTM D 2700 Motor Method engine test.

(36) "Motor Vehicles" means all vehicles, vessels, watercraft, engines, machines, or mechanical contrivances that are propelled by internal combustion engines or motors.

(37) "Motor Vehicle Fuel" means gasoline, gasoline-ethanol blends, diesel, B100 Biodiesel, Biodiesel Blends, E85 Fuel Ethanol, M85 Fuel Methanol, or any other liquid product used for the generation of power in an internal combustion engine, except aviation gasoline, aviation jet fuels, liquefied petroleum gases or natural gases.

(38) "Nonretail dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is dispensed through a card or key-activated fuel dispensing device to nonretail customers.

(39) "Octane Rating" means the rating of the anti-knock characteristics of a grade or type of gasoline determined by dividing by two the sum of the research octane number and the motor octane number.

(40) "Octane Rating Certification Documentation" means an invoice, bill of lading, delivery ticket, letter or other documentation that specifies the actual octane rating or a rounded rating that is the largest whole number or half of a number that is less than or equal to the number determined by or certified to the person transferring the gasoline.

(41) "Official Sample" means a motor fuel sample delivered via nozzle directly through a fuel pump, dispenser, or metering device from either a fuel delivery truck, tank wagon, above ground or below ground fuel storage tank into a suitable sealable, one litre or larger pressure-tight metal or glass container in the presence of, or drawn by, a department representative in the manner prescribed by department procedures. An official sample shall be appropriately sealed and labeled as to its identity, type, brand, grade, posted automotive fuel rating and the location, source, date, and name of official taking it at the time it is withdrawn from storage. A custody transfer receipt or record will be completed whenever an official sample changes hands enroute to a qualified motor fuel standards laboratory.

(42) "Oxygen Content of Gasoline" means the percentage of oxygen by mass contained in a gasoline.

(43) "Oxygenate" means an oxygen-containing, ashless, organic compound, such as an alcohol or ether, which can be used as a fuel or fuel supplement.

(44) "Premium Diesel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine and shall meet Standard Fuel Specifications OAR 603-027-0420.

(45) "Production" means the ability of a biofuel production facility to produce biofuel that is in compliance with applicable ASTM International specifications.

(46) "Research Octane Number" means a numerical indication of a spark-ignition engine fuel's resistance to knock obtained by comparison with reference fuels in a standardized ASTM D 2699 Research Method engine test.

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(47) "Retail Dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is or offered for sale to the public.

(48) "SAE" means the SAE International, a technical organization for engineers, scientists, technicians, and others in positions that cooperate closely in the engineering, design, manufacture, use, and maintainability of self-propelled vehicles.

(49) "Sales" means volumes of biofuels measured in gallons per year, relevant consumer usage, demand, pricing, and other factors affecting sales.

(50) "Thermal Stability" means the ability of a fuel to resist the thermal stress which is experienced by the fuel when exposed to high temperatures in a fuel delivery system.

(51) "Unleaded" in conjunction with "engine fuel" or "gasoline" means any gasoline or gasoline-oxygenate blend to which no lead or phosphorus compounds have been intentionally added and which contains not more than 0.013 gram lead per liter (0.05 g lead per U.S. gal) and not more than 0.0013 gram phosphorus per liter (0.005 g phosphorus per U.S. gal).

(52) "Use" means the historic blending of biofuel in Oregon in areas using biofuel to meet Oregon's Renewable Fuel Standard (RFS) and other information relevant to industry blending of biofuel including the infrastructure capacity to blend and distribute biofuel.

(53) "Wholesale Dealer" means any person who sells motor vehicle fuel if the seller knows or has reasonable cause to believe that the buyer intends to resell the motor vehicle fuel in the same or an altered form to a retail dealer, a nonretail dealer, or another wholesale dealer.

(54) "Winter" or "Winterized" Diesel means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine which has been blended for low temperature operability and shall meet Standard Fuel Specifications OAR 603-027-0420.

(55) "Withdrawn From Bulk" means removed from a bulk facility for delivery directly into a cargo tank or a barge to be transported to a location other than another bulk facility for use or sale in this state.

[Publications referenced are available from the agency.]
Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & ORS 646.905 - 646.990
Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183
Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08

603-027-0420

Standard Fuel Specifications

(1) Gasoline and Gasoline-Oxygenate Blends, as defined in this regulation, shall meet the following requirements:

(a) The ASTM D 4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel," except that volatility standards for unleaded gasoline blended with ethanol shall meet but not be more restrictive than those adopted under the rules, regulations, and Clean Air Act waivers of the U.S. Environmental Protection Agency (which includes those promulgated by Oregon and Federally approved State Implementation Plans (SIP's)). Gasoline blended with ethanol shall be blended under any of the following three options:

(A) The base gasoline used in such blends shall meet the requirements of ASTM D 4814; or

(B) The blend shall meet the requirements of ASTM D 4814; or

(C) The base gasoline used in such blends shall meet all the requirements of ASTM D 4814 except distillation, and the blend shall meet the distillation requirements of the ASTM D 4814 specification.

(b) Blends of gasoline and ethanol shall not exceed the ASTM D 4814 vapor pressure standard by more than 1.0 psi. During the time period between June 1 and September 15 of each calendar year, blends containing a minimum of 9 percent ethanol by volume and a maximum of 10 percent ethanol by volume shall not exceed the ASTM D 4814 vapor pressure limits by more than 1.0 psi. All other blend concentrations shall meet the ASTM D 4814 vapor pressure limits during this period.

(c) Minimum Antiknock Index (AKI). The AKI shall not be less than the AKI posted on the product dispenser or as certified on the invoice, bill of lading, shipping paper, or other documentation.

(d) Lead Substitute Gasoline. Gasoline and gasoline-oxygenate blends sold as "lead substitute" gasoline shall contain a lead substitute additive which provides a level of protection against exhaust valve seat recession which is equivalent to the level of protection provided by a gasoline containing at least 0.026 gram of lead per liter (0.10 g per U.S. gal).

(2) Ethanol intended for blending with gasoline shall meet the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel."

(3) Gasoline-Ethanol Blends Required

(a) Consistent with House Bill 2210 Section 17(1), the Oregon Department of Agriculture shall study and monitor ethanol fuel production, use, and sales in Oregon.

(b) Based upon the Department of Agriculture's study of ethanol production, use, and sales in the State of Oregon, the mandatory use of ethanol as provided in HB 2210 Section 18(1) shall be phased in through three Oregon regions. These regions are defined by counties as follows:

(A) Region 1; Clackamas, Clatsop, Columbia, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties;

(B) Region 2; Benton, Coos, Curry, Douglas, Jackson, Josephine, Lane, Lincoln, and Linn Counties; and

(C) Region 3; Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, and Wheeler Counties.

(c) The ethanol facilities production capacity in Oregon has reached a level of at least 40 million gallons per year.

(A) As of January 15, 2008, except as provided in subparagraph (d) of this section, all retail dealers, nonretail dealers, or wholesale dealers within Region 1 may only sell or offer for sale gasoline that contains ten percent ethanol by volume.

(B) As of April 15, 2008, except as provided in subparagraph (d) of this section, all retail dealers, nonretail dealers, or wholesale dealers within Region 2 may only sell or offer for sale gasoline that contains ten percent ethanol by volume.

(C) As of September 16, 2008, except as provided in subparagraph (d) of this section, all retail dealers, nonretail dealers, or wholesale dealers within Region 3 may only sell or offer for sale gasoline that contains ten percent ethanol by volume.

(d) A retail dealer, nonretail dealer, or wholesale dealer may sell or offer for sale gasoline that is not blended with ethanol if the gasoline is for use in:

(A) An aircraft;

(i) With a supplemental type certificate approved by the Federal Aviation Administration that allows the aircraft to use gasoline that is intended for use in motor vehicles, or

(ii) Issued a type certificate by an aircraft engine manufacturer that allows the aircraft to use gasoline that is intended for use in motor vehicles;

(B) An aircraft that has been issued an experimental certificate, described in 14 C.F.R. 21.191, by the Federal Aviation Administration and that is required by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles;

(C) A light-sport aircraft, as defined in 14 C.F.R. 1.1, that is required by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles;

(D) A vintage aircraft, as defined by the Oregon Department of Aviation by rule, that is required by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles;

(E) An antique vehicle, as defined in ORS 801.125;

(F) A Class I all-terrain vehicle, as defined in ORS 801.190;

(G) A Class III all-terrain vehicle, as defined in ORS 801.194;

(H) A racing activity vehicle, as defined in ORS 801.404;

(I) A snowmobile, as defined in ORS 801.490;

(J) Tools, including but not limited to lawn mowers, leaf blowers, and chain saws; or

(K) A watercraft.

(e) Gasoline-ethanol blends shall contain not less than 9.2 percent by volume of agriculturally derived ethanol, exclusive of denaturants and permitted contaminants, that complies with

(A) OAR 603-027-0420(2) Ethanol ASTM D 4806 standards,

(B) Denatured as specified in 27 C.F.R. parts 20 and 21, and

(C) Complies with the volatility requirements specified in 40 C.F.R. part 80.

(f) The ethanol shall be derived from agricultural product, woody waste or residue.

(g) The gasoline and gasoline-ethanol blends shall comply with OAR 603-027-0420(1).

(h) It is prohibited to blend with casinghead gasoline, absorption gasoline, drip gasoline, or natural gasoline after it has been sold, transferred, or otherwise removed from a refinery or terminal.

(4) Gasoline Additive Restrictions.

(a) Effective November 1, 2009, a wholesale dealer, retail dealer, or nonretail dealer may not sell or offer to sell any gasoline blended or mixed with:

(A) Ethanol unless the blend or mixture meets the specifications or registration requirements established by the United States Environmental

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Protection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. section 7545 and 40 C.F.R. Part 79, and the ethanol complies with ASTM International specification ASTM D 4806;

(B) Methyl tertiary butyl ether in concentrations that exceed 0.15 percent by volume; or

(C) A total of all of the following oxygenates that exceeds one-tenth of one percent, by weight, of:

- (i) Diisopropylether,
- (ii) Ethyl tert-butylether,
- (iii) Iso-butanol,
- (iv) Iso-propanol,
- (v) N-butanol,
- (vi) N-propanol,
- (vii) Sec-butanol,
- (viii) Tert-amyl methylether,
- (ix) Tert-butanol,
- (x) Tert-pentanol or tert-amylalcohol, and

(xi) Any other additive that has not been approved by the 2005 California Air Resources Board or the United States Environmental Protection Agency 2007 40 CFR Part 79.

(5) Diesel Fuel shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils."

(6) Winter or Winterized Diesel Fuel shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils" and have a cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Winter or winterized diesel (low temperature operability) is only applicable October 1 — March 31 of each year.

(7) Premium Diesel Fuel — All diesel fuel products identified on retail and nonretail dispensers, bills of lading, invoices, shipping papers, or other documentation as premium, super, supreme, plus, or premier shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils" and must conform to at least two of the following requirements:

(a) Energy Content — A minimum energy content of 38.65 MJ/L, gross (138,700 BTU/gallon, gross) as measured by ASTM Standard Test Method D 240;

(b) Cetane Number — A minimum cetane number of 47.0 as determined by ASTM Standard Test Method D 613;

(c) Low Temperature Operability — A cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Low temperature operability is only applicable October 1 — March 31 of each year;

(d) Thermal Stability — A minimum reflectance measurement of 80 percent as determined by ASTM D 6468 (180 minutes, 150 OC);

(e) Fuel Injector Cleanliness — A Coordinating Research Council (CRC) rating of 10.0 or less and a flow loss of 6.0 percent or less as determined by the Cummins L-10 Injector Deposit Test.

(A) When a fuel uses a detergent additive to meet the requirement, upon the request of the Director, the fuel marketer shall provide test data indicating the additive being used has passed the Cummins L-10 Injector Depositing Test requirements when combined with Caterpillar 1-K (CAT 1-K) reference fuel. The Director may also request records or otherwise audit the amount of additive being used to ensure proper treatment of fuels according to the additive manufacturer's recommended treat rates.

(i) Upon the request of the Director, the fuel marketer shall provide an official "Certificate of Analysis" of the physical properties of the additive.

(ii) Upon the request of the Director, the fuel marketer shall provide a sample of detergent additive in an amount sufficient to be tested with CAT 1-K reference fuel in a Cummins L-10 Injector Depositing Test. If the sample does not meet the requirements of the Cummins L-10 Injector Deposit test, then all costs for sampling, transporting, and testing shall be the responsibility of the fuel supplier. If the sample meets the requirements of the Cummins L-10 Injector Deposit test, then all costs for sampling, transporting, and testing shall be the responsibility of the Department of Agriculture.

(B) When a fuel marketer relies on the inherent cleanliness of the diesel fuel to pass the Cummins L-10 Injector Depositing Test or if the fuel requires a lower detergent additive level than the amount required when the additive is used with the CAT 1-K reference fuel, the fuel marketer shall provide, upon the request of the Director, annual test results from an independent laboratory that confirms the fuel meets the requirements of OAR

603-027-0420(5)(e). The time of the fuel sampling and testing shall be at the Director's discretion. The Director may witness the sampling of the fuel and the sealing of the sample container(s) with security seals. The Director may request confirmation from the testing laboratory that the seals were intact upon receipt by the laboratory. The final test results shall be provided to the Director. All costs for sampling, transporting, and testing shall be the responsibility of the fuel supplier. If the annual test complies, any additional testing at the request of the Director shall be paid for by the Department of Agriculture.

(8) Biodiesel; B100 biodiesel intended for blending with diesel fuel shall meet the requirements of ASTM D 6751, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels."

(9) Biodiesel Blends; Blends of biodiesel and diesel fuels shall meet the following requirements:

(a) The base diesel fuel shall meet the requirements of ASTM D 975, Standard Specification for Diesel Fuel Oils; and

(b) The biodiesel blend stock shall meet the requirements of ASTM D 6751, Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

(c) Exception; Biodiesel may be blended with diesel fuel whose sulfur or aromatic levels are outside specification ASTM D 975, Standard Specification for Diesel Fuel Oils, grades 1-D S15, 1-D S500, 2-D S15, or 2-D S500 provided the finished mixture meets pertinent national and local specifications and requirements for these properties.

(10) Aviation Gasoline shall meet the requirements of ASTM D 910, "Standard Specification for Aviation Gasoline."

(11) E85 Fuel Ethanol shall meet the requirements of ASTM D 5798, "Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines."

(12) M85 Fuel Methanol shall meet the requirements of ASTM D 5797, "Standard Specification for Fuel Methanol (M70-M85) for Automotive Spark-Ignition Engines."

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & ORS 646.905 - 646.990
Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183
Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 15-2007(Temp), f. & cert. ef. 10-15-07 thru 4-11-08; DOA 20-2007(Temp) f. & cert. ef. 11-29-07 thru 4-11-08; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08

603-027-0430

Classification and Method of Sale of Petroleum Products

(1) General Considerations:

(a) Documentation. When gasoline; gasoline-oxygenate blends; reformulated gasoline; M85 and M100 fuel methanol; E85 and E100 fuel ethanol; B100 biodiesel and biodiesel blends; diesel fuel; winter or winterized diesel fuel; premium diesel fuel; or aviation gasoline are sold, an invoice, bill of lading, shipping paper or other documentation, must accompany each delivery other than a sale by a retail or nonretail dealer. This document must identify the quantity, the name of the product, the particular grade of the product, the word "Winter" or "Winterized" diesel if applicable, the word "Premium" diesel and a declaration of all performance properties that qualifies the fuel as premium diesel as required in OAR 603-027-0420 if applicable, the applicable automotive fuel rating, the name and address of the seller and buyer, and the date and time of the sale. In addition, for gasoline-oxygenate and gasoline-alcohol blends which contain more than 1.5 mass percent oxygen, the documentation shall state the oxygenate type and oxygenate content, in volume percent, to the nearest 0.5 volume percent. Each operator of a bulk facility and each person who imports motor vehicle fuels into this state for sale in this state shall keep, for at least one year, at the person's registered place of business complete and accurate records of any motor vehicle fuels sold if sold or delivered in this state. Each ethanol production facility in Oregon shall keep, on an annual basis by month, at the person's registered place of business, documentation declaring the production facility's name, location address, net ethanol production capacity, the date that the net ethanol capacity was attained, quantity of ethanol produced, and sales in Oregon. Retail dealers and nonretail dealers shall maintain at their facilities the octane rating certification or motor vehicle fuel delivery documentation for the three most recent deliveries to the facility for each grade of gasoline, fuel ethanol, fuel methanol, biodiesel and biodiesel blends, and diesel fuel, other renewable diesel fuel, and diesel-other renewable diesel fuel blends sold or offered for sale.

(b) Retail and Nonretail Gasoline Dispenser Labeling. All retail and nonretail gasoline dispensing devices must identify conspicuously on each face of the dispenser(s).

(A) The type of product,

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- (B) The particular grade of the product,
- (C) Type of oxygenate contained if applicable,

(i) Including the specific volume percent of ethanol in gasoline-ethanol blends stating, for example, "THIS PRODUCT CONTAINS 10% ETHANOL" or other similar language in type at least 12.7 millimeters (1/2 inch) in height, 1.5 millimeter (1/16 inch) stroke (width of type) located on each face and on the upper 50 percent of the dispenser front panels in a position clear and conspicuous from the driver's position,

(ii) Prohibited terms and phrases include but are not limited to, "Contains Up To 10% Ethanol," "May Contain Ethanol," or any other similar language,

- (D) The applicable automotive fuel rating, and

(E) If non-ethanol blended gasoline in compliance with OAR 603-027-0420, the dispensers shall be labeled, "NON-ETHANOL BLENDED GASOLINE FOR EXEMPTED USE ONLY (ORS 646.913)" in capital letters and type at least 12.7 millimeters (1/2 inch) in height, 1.5 millimeter (1/16 inch) stroke (width of type) located on each face and on the upper 50 percent of the dispenser front panels in a position clear and conspicuous to the consumer.

(c) Posting Exceptions for Non-Ethanol Blended Gasoline. The exceptions for non-ethanol blended gasoline shall be posted at a business that sells or offers for sale non-ethanol blended gasoline in a position that is clear and conspicuous to the consumer. The exceptions shall be posted;

"NON-ETHANOL BLENDED GASOLINE FOR USE IN THE FOLLOWING APPLICATIONS ONLY;" in capital letters and type at least 6.4 millimeters (1/4 inch) in height, 1 millimeter (1/32 inch) stroke (width of type), followed by,

"AIRCRAFT WITH A SUPPLEMENTAL TYPE CERTIFICATE APPROVED BY THE FEDERAL AVIATION ADMINISTRATION THAT ALLOWS THE AIRCRAFT TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

AIRCRAFT ISSUED A TYPE CERTIFICATE BY AN AIRCRAFT ENGINE MANUFACTURER THAT ALLOWS THE AIRCRAFT TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

AN AIRCRAFT THAT HAS BEEN ISSUED AN EXPERIMENTAL CERTIFICATE, DESCRIBED IN 14 C.F.R. 21.191, BY THE FEDERAL AVIATION ADMINISTRATION AND THAT IS REQUIRED BY THE MANUFACTURER'S SPECIFICATIONS TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

A LIGHT-SPORT AIRCRAFT, AS DEFINED IN 14 C.F.R. 1.1, THAT IS REQUIRED BY THE MANUFACTURER'S SPECIFICATIONS TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

A VINTAGE AIRCRAFT, AS DEFINED BY THE OREGON DEPARTMENT OF AVIATION BY RULE, THAT IS REQUIRED BY THE MANUFACTURER'S SPECIFICATIONS TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

AN ANTIQUE VEHICLE, AS DEFINED IN ORS 801.125;

A CLASS I ALL-TERRAIN VEHICLE, AS DEFINED IN ORS 801.190;

A CLASS III ALL-TERRAIN VEHICLE, AS DEFINED IN ORS 801.194;

A RACING ACTIVITY VEHICLE, AS DEFINED IN ORS 801.404;

A SNOWMOBILE, AS DEFINED IN ORS 801.490;

TOOLS, INCLUDING BUT NOT LIMITED TO LAWN MOWERS, LEAF BLOWERS, AND CHAIN SAWS; OR

A WATERCRAFT (Reference ORS 646.913)"

in capital letters and type at least 3 millimeters (1/8 inch) in height, 0.4 millimeter (1/64 inch) stroke (width of type).

(d) Grade Name. The sale of any product under any posted grade name that indicates to the purchaser that it is of a certain automotive fuel rating or ASTM grade indicated in the posted grade name must be consistent with the applicable standard specified in OAR 603-027-0420 "Standard Fuel Specifications".

(2) Automotive Gasoline and Automotive Gasoline-Oxygenate Blends:

(a) Posting of Antiknock Index Required. All automotive gasoline and automotive gasoline-oxygenate blends shall post the antiknock index in accordance with 16 CFR Part 306.

(b) Use of Lead Substitute Must Be Disclosed. Each dispensing device from which gasoline or gasoline oxygenate blend containing a lead substitute is dispensed shall display the grade name followed by "With a Lead Substitute" (e.g. "Unleaded With a Lead Substitute"). The lettering of the lead substitute declaration shall not be less than 12.7 millimeters (1/2 in) in height and 1.5 centimeters (1/16 in) stroke (width of type). The color of the lettering shall be in definite contrast to the background color to which it is applied.

(c) Prohibition of Terms. It is prohibited to use specific terms to describe a grade of gasoline or gasoline-oxygenate blend unless it meets the minimum antiknock index requirement shown in Table 1. [Table not included. See ED. NOTE.]

(3) Diesel Fuel:

(a) Labeling of Product and Grade Required. Diesel fuel shall be identified by "Diesel" and grades "No. 1-D S15", "No. 1-D S500", "No. 1-D S5000," "No. 2-D S15," "No. 2-D S500," "No. 2-D S5000," or "No. 4-D."

Each retail or nonretail dispenser of diesel fuel shall be labeled "Diesel" and the grade being dispensed.

(b) Location of Label. These labels shall be located on each face and on the upper 50 percent of the dispenser front panels in a position clear and conspicuous from the driver's position, in a type at least 12.7 millimeter (1/2 in) in height, 1.5 millimeter (1/16 in) stroke (width of type).

(4) Winter or Winterized Diesel Fuel:

(a) Labeling of Product and Grade Required. The dispensers of winterized diesel fuel must be labeled as required in OAR 603-027-0430(3)(a) and include the words "WINTERIZED DIESEL" or "WINTER DIESEL" (e.g. "WINTERIZED DIESEL No. 2-D S15").

(b) Location of Winterized Diesel Fuel Label. The location of the winterized diesel label shall be as required in OAR 603-027-0430(3)(b) or on a "pump topper" mounted on top of each winterized diesel dispenser with lettering as specified in 603-027-0430(3)(b) and must be in a position that is clear and conspicuous from the driver's position.

(5) Labeling of Premium Diesel. In addition to labeling requirements specified in OAR 603-027-0430(3), all retail and nonretail dispensers identified as premium diesel must display either:

(a) A label that includes all qualifying parameters as specified in OAR 603-027-0420(5) Premium Diesel Fuel affixed to each retail and nonretail dispenser. The label shall include a series of check blocks clearly associated with each parameter. The boxes for the parameters qualifying the fuel must be checked. All other boxes shall remain unchecked. The marketer may check as many blocks as apply (see Example 1); or

(b) A label that includes only the parameters selected by a marketer to meet the premium diesel requirements as specified in OAR 603-027-0420(5) Premium Diesel Fuel. In either case, the label must display the following words (see Example 2):

(A) "PREMIUM DIESEL FUEL" in a type at least 12 millimeters (1/2 inch) in height by 1.4 millimeters (1/16 inch) stroke (width of type).

(c) When applicable, as determined by the label option and qualifying parameters chosen by the marketer, the label must also display the following information and letter type size:

(A) The words "Energy Content", "Cetane Number", "Low Temperature Operability," "Thermal Stability," and "Fuel Injector Cleanliness" in a type at least 6 millimeters (1/4 inch) in height by 0.75 millimeter (1/32 inch) stroke (width of type).

(B) A declaration of the minimum Energy Content (minimum 38.65 MJ/L gross (138,700 BTU/gallon), if energy content is chosen as a qualifying parameter, in type at least 3 millimeters (1/8 inch) in height by 0.4 millimeter (1/64 inch) stroke (width of type).

(C) The minimum cetane number guaranteed (at least 47.0) if cetane number is chosen as a qualifying parameter, in type at least 3 millimeters (1/8 inch) in height by 0.4 millimeter (1/64 inch) in stroke (width of type).

(D) The date range of low temperature operability enhancement, (e.g., October — March) along with the qualifying test method (ASTM D 4539 or ASTM D 2500), if low temperature operability is chosen as a qualifying parameter, in a type at least 3 millimeters (1/8 inch) in height by 0.4 millimeter (1/64 inch) stroke (width of type).

(E) Example 1: [Example not included. See ED. NOTE.]

(F) Example 2: [Example not included. See ED. NOTE.]

(d) The label must be conspicuously displayed on the upper-half of the product dispenser front panel in a position that is clear and conspicuous from the driver's position.

(6) Biodiesel:

(a) Identification of Product. Biodiesel and biodiesel blends shall be identified by the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel. (Examples: B10; B20; B100)

(b) Labeling of Retail and Non-Retail Dispensers Containing More than 5% Biodiesel. Each retail and non-retail dispenser of biodiesel or biodiesel blend containing more than 5% biodiesel shall be labeled in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type) with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "Biodiesel" or "Biodiesel Blend". (Examples: B100 Biodiesel; B60 Biodiesel Blend; B20 Biodiesel Blend)

(c) Documentation for Dispenser Labeling Purposes. The operator of retail and non-retail dispensers shall be provided, at the time of delivery of the fuel, with a declaration of the volume percent biodiesel on an invoice, bill of lading, shipping paper, or other document. This documentation is for dispenser labeling purposes only; it is the responsibility of any potential blender to determine the amount of biodiesel in the diesel fuel prior to blending.

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(d) Exemption. Biodiesel blends containing 5% or less biodiesel by volume are exempted from requirements in OAR 603-027-0430(6)(a), (b), and (c).

(7) Aviation Gasoline: Labeling of Grade Required. Aviation gasoline and dispensers shall be identified by and labeled with Grade 80, Grade 100, or Grade 100LL.

(8) E85 Fuel Ethanol:

(a) How to Identify E85 Fuel Ethanol. Fuel ethanol shall be identified as E85. (Example: E85)

(b) Retail or Nonretail E85 Fuel Ethanol Dispenser Labeling. Each retail or nonretail dispenser of fuel ethanol shall be labeled in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type) with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol." (Example: E85 Ethanol).

(A) Fuel ethanol dispensers shall be labeled with its automotive fuel rating in accordance with 16 Code of Federal Regulations Part 306.

(B) A label shall be posted which states, "For Use in Flexible Fuel Vehicles (FFV) Only." This information shall be posted on the upper 50% of the dispenser front panels in a position clear and conspicuous from the driver's position, in a type at least 12.7 mm (1/2 inch) in height, 1.5 mm (1/16 inch) stroke (width of type).

(9) Fuel Methanol:

(a) Identification of Fuel Methanol. Fuel methanol shall be identified by the capital letter M followed by the numerical value volume percentage of methanol. (Example: M85)

(b) Retail or Nonretail Dispenser Labeling. Each retail or nonretail dispenser of fuel methanol shall be labeled in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type) with the capital letter M followed by the numerical value volume percent methanol and ending with the word "methanol." (Example: M85 Methanol).

(c) Additional Labeling Requirements. Fuel methanol shall be labeled with its automotive fuel rating in accordance with 16 CFR Part 306.

[ED. NOTE: Tables & Examples referenced are available from the agency.]
Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & 646.905 - 646.990
Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183
Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 15-2007(Temp), f. & cert. ef. 10-15-07 thru 4-11-08; DOA 20-2007(Temp) f. & cert. ef. 11-29-07 thru 4-11-08; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08

603-027-0440

Storage Tanks

(1) Water in Motor Vehicle Fuel Storage:

(a) Water in Gasoline-Alcohol Blends, Biodiesel, Biodiesel Blends, E85 Fuel Ethanol, M85 Fuel Methanol, and Aviation Gas. No water or water-alcohol phase greater than six millimeters (1/4 in) as determined by an appropriate detection paste is allowed to accumulate in any tank utilized in the storage of gasoline-alcohol blend, Biodiesel, Biodiesel Blends, E85 fuel ethanol, M85 fuel methanol, and aviation gasoline.

(b) Water in Gasoline, Diesel, Gasoline-Ether, and Other Fuels. Water phase shall not exceed 25 mm (1 inch) in depth when measured with water indicating paste in any tank utilized in the storage of diesel, gasoline, gasoline-ether blends at retail or nonretail except as required in OAR 603-027-0440(1)(a).

(2) Product Storage Identification:

(a) Fill Connection Labeling. The fill connection for any motor vehicle fuel or aviation gasoline storage tank from which the fuels are dispensed directly into motor vehicle or aircraft fuel tanks shall be permanently, plainly, and visibly marked as to the grade of product contained therein.

(A) In addition, storage tank fill connections of non-ethanol blended gasoline shall be permanently, plainly, and visibly marked that the product contained therein is non-ethanol blended gasoline for use only in the exceptions complying with ORS 646.913.

(b) Declaration of Meaning of Color Code. When the fill connection device is marked by means of a color code, the color code key shall be conspicuously displayed at the place of business.

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & 646.905 - 646.990
Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183
Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08

603-027-0490

Enforcement Proceedings; Civil Penalties

(1) Consolidation of Proceedings: Notwithstanding that each and every violation of these rules and/or 1997 Oregon Laws Chapter 310 is a separate and distinct act and in cases of continuing violations, each day's continuance is a separate and distinct violation, proceedings for a Stop Use,

Hold and/or Removal Order, or for the assessment of civil penalties arising from the same conduct or failure to act may be consolidated into a single proceeding.

(2) The Director or the Director's designate shall prescribe a reasonable time for the elimination of the violation prior to imposing a civil penalty, except that if a party fails to abide by the terms of any Stop Use, Hold and/or Removal Order, the Director or the Director's designate may immediately impose a civil penalty in addition to any other remedies provided by law.

(3) Violations occurring after the time prescribed for the elimination of the violation shall be considered repeat violations.

(4) Civil penalties shall be due and payable when the person incurring the penalty receives a Civil Penalty Assessment Notice in writing from the Director or the Director's designate.

(5) A Civil Penalty Assessment Notice, Stop Use Order, Hold Order and/or Removal Order shall be in writing. In addition to the posting providing for by OAR 603-207-0470 for Stop Use, Hold and Removal Orders, these documents shall be served on the owner or operator of the facility by registered mail, certified mail, or in person. The notice shall include, but not be limited to:

(a) A reference to the particular section of the statute and/or administrative rule involved and;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed, if any;

(d) A statement of the person's right to request a hearing if such request is made within ten days of mailing of the notice and an explanation of how a hearing may be requested;

(e) A statement that the notice becomes a final order unless the person upon whom the Stop Use, Hold and/or Removal Order, and /or civil penalty is assessed makes a written request for a hearing within ten days from the date of the mailing of the notice.

(6) A civil penalty imposed under the applicable statutes or these regulations may be remitted or reduced at the Director's discretion upon such terms and conditions that are proper and consistent with public safety and welfare.

(7) Hearing Procedures: All hearings shall be conducted pursuant to the applicable contested case procedures as outlined in ORS 183.310 to 183.550, and the Attorney General's Uniform and Model Rules of Procedure (OAR chapter 137).

(8) Entry of Order and Appeal Rights: If a person notified of the Stop Use, Hold, and/or Removal Order and/or civil penalty fails to request a hearing as specified in OAR 603-027-0490(5)(e), or if after the hearing the person is found to be in violation of the provisions of these rules, a final order may be entered by the Department as follows:

(a) The order shall be signed by the Director or the Director's designate;

(b) If the order is not appealed, or if it is appealed and the order is sustained on appeal, the order shall constitute a judgment and may be recorded with the county clerk in any county of this state. Any penalty provided in the order so recorded becomes a lien upon the title of any interest and real property in the county owned by the person against whom the order is entered.

(9) Penalty schedule: In addition to any other penalty provided by law, the Director may assess a civil penalty for violation of any provision of Oregon Laws 1997, chapter 310 section (7) relating to Motor Fuel Standards Regulation. The amount of any civil penalty shall be determined using the following table and shall not exceed \$10,000. In establishing penalty assessments within the table (Table 2), the department will consider factors such as the type of violation, the cause(s) of the violation, the economic impact on fuel purchasers, prior history of violations, repetition of violations, and the degree of demonstrated cooperativeness of the fuel seller. [Table not included. See ED. NOTE.]

(10) The commission of each violation has been categorized as to its magnitude of violation as follows:

(a) Gravity 1 (Minor):

(A) Labeling of Dispenser(s) (Ref. OAR 603-027-0430):

(i) Gasoline dispenser(s) not labeled with the identity of the product dispensed;

(ii) Gasoline dispenser(s) not labeled with the identity of the grade dispensed;

(iii) Gasoline dispenser(s) not labeled with the identity of oxygenates;

(iv) Gasoline dispenser(s) of non-ethanol blended gasoline not labeled for exempted use only in compliance with OAR 603-027-0430.

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(v) Exceptions for non-ethanol blended gasoline not posted in compliance with OAR 603-027-0430.

(vi) Use of Prohibited Terms. Prohibited terms used to describe the grade of gasoline or gasoline-oxygenate blends. (Ref. OAR 603-027-0430.);

(vii) Gasoline dispenser(s) not labeled with the Antiknock Index (AKI) number;

(viii) Gasoline dispenser(s) for lead substitute motor vehicle fuels not properly identified;

(ix) Diesel dispenser not labeled with either the identity of the product and/or grade dispensed;

(x) Location of either the diesel product and/or grade label not on each face and on the upper 50 percent of the dispenser front panels;

(xi) Winter or winterized diesel fuel dispenser(s) not labeled in compliance with OAR 603-027-0430;

(xii) Premium diesel fuel dispenser(s) not labeled in compliance with OAR 603-027-0430;

(xiii) Aviation gasoline dispenser(s) not labeled with the identity of the grade dispensed;

(xiv) Fuel ethanol dispenser(s) not labeled with the correct automotive fuel rating, the identity of the product dispensed, or use limited to flex fuel vehicles only;

(xv) Fuel methanol dispenser(s) not labeled with the correct automotive fuel rating and the identity of the product dispensed;

(xvi) Biodiesel or biodiesel blend fuel dispenser(s) not labeled in compliance with OAR 603-027-0430.

(B) Storage Tank(s); Motor vehicle fuel storage tank(s):

(i) Not correctly identified as to the product contained;

(ii) Not correctly identified that the product contained therein is non-ethanol blended gasoline for use only in exceptions complying with OAR 603-027-0420. (Ref. OAR 603-027-0440)

(C) Documentation, Wholesale Dealer and Bulk Facility (Ref. OAR 603-027-0430):

(i) Incorrect, incomplete, or no documentation of motor vehicle fuels provided to the retail dealer or nonretail dealer at the time of motor vehicle fuel delivery;

(ii) Motor vehicle fuel delivery documentation not maintained for at least one year at the person's registered place of business.

(D) Documentation, Ethanol Production Facility not keeping, on an annual basis by month, at the person's registered place of business, documentation declaring the production facility's name, location address, net ethanol production capacity, the date that the net ethanol capacity attained, quantity of ethanol produced, and sales in Oregon.

(E) Documentation, Retail Dealer and Nonretail Dealer (Ref. OAR 603-027-0430); Octane rating certification or motor vehicle fuel delivery documentation not maintained at their facilities for the three most recent deliveries to the facility for each grade of gasoline, fuel ethanol, fuel methanol, biodiesel and biodiesel blends, and diesel fuel sold or offered for sale.

(b) Gravity 2 (Moderate):

(A) Storage Tank(s);

(i) Water phase in motor vehicle fuel storage tank(s) for gasoline-alcohol blends, B100 Biodiesel, Biodiesel Blends, E85 fuel ethanol, M85 fuel methanol, and aviation gasoline exceed allowable limits (Ref. OAR 603-027-0440);

(ii) Water phase in motor vehicle fuel storage tank(s) for gasoline, diesel, gasoline-ether, and other fuels exceed allowable limits (Ref. OAR 603-027-0440).

(c) GRAVITY 3 (Major):

(A) Automotive fuel rating of the gasoline does not meet the minimum antiknock index (AKI) posted on the dispenser or certified on the invoice, bill of lading, shipping paper, or other documentation. (Ref. OAR 603-027-0420 and 603-027-0430);

(B) Gasoline does not meet ASTM standards (Ref. OAR 603-207-0420);

(C) Gasoline offered for sale with a lead substitute that does not meet requirements for a lead substitute gasoline. (Ref. OAR 603-027-0420);

(D) Ethanol intended for blending with gasoline does not meet the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel." (Ref. OAR 603-027-0420);

(E) Gasoline sold or offered for sale does not meet gasoline-ethanol blend requirements (Ref OAR 603-027-0420);

(F) Gasoline Additive Restrictions: A wholesale dealer, retail dealer, or nonretail dealer selling or offering for sale gasoline blended or mixed with prohibited additives. (Ref. OAR 603-027-0420);

(G) Diesel fuel offered for sale does not meet ASTM standards (Ref. OAR 603-027-0420);

(H) Winter or Winterized diesel fuel offered for sale does not meet Standard Fuel Specifications (Ref. OAR 603-027-0420);

(I) Premium diesel fuel offered for sale does not meet Standard Fuel Specifications (Ref. OAR 603-027-0420);

(J) Biodiesel intended for blending with diesel fuel does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420);

(K) Biodiesel blend offered for sale does not meet fuel specifications (Ref. OAR 603-027-0420);

(L) Aviation gasoline does not meet the requirements of ASTM D 910, "Standard Specification for Aviation Gasolines". (Ref. OAR 603-027-0420);

(M) E85 Fuel Ethanol offered for sale does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420);

(N) M85 Fuel Methanol offered for sale does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420).

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

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & 646.905 - 646.990

Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183

Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08

Department of Agriculture, Oregon Processed Vegetable Commission Chapter 647

Rule Caption: Adopts rules related to per diem compensation, reimbursement for hiring a substitute and travel reimbursement.

Adm. Order No.: OPVC 1-2008

Filed with Sec. of State: 3-14-2008

Certified to be Effective: 4-1-08

Notice Publication Date: 12-1-2007

Rules Adopted: 647-040-0000, 647-040-0010, 647-040-0020

Subject: The proposed rules establish per diem compensation for commissioners, payment of travel reimbursement and reimbursement for hiring a substitute in an emergency.

Rules Coordinator: John McCulley—(503) 370-7019

647-040-0000

Per Diem Compensation

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

(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 Processed Vegetable Commission a written claim for compensation by the 15th day of the calendar month following the month for which the member seeks compensation. The member must specify the amount of time the member spent on official commission duties as well as the nature of the duties performed for any day or portion thereof for which the member claims compensation.

Stat. Auth.: ORS 292.495, 576.206 & 576.416.

Stats. Implemented:

Hist.: OPVC 1-2008, f. 3-14-08, cert. ef. 4-1-08

647-040-0010

Reimbursement of Travel and Other Expenses

(1) Subject to sections (2)–(6) of this rule, a member of the Oregon Processed Vegetable Commission, including a member employed in full-time public service, may receive actual and necessary travel and other expenses actually incurred in the performance of the member's official duties.

(2) In order to receive reimbursement of actual and necessary travel and other expenses, a member must submit to the Oregon Processed Vegetable Commission a written itemized claim for reimbursement supported by receipts, invoices or other appropriate documentation for travel and other expenses by the 15th day of the calendar month following the

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month in which the member incurred the expense. The claim for reimbursement must include the following information for each expense:

- (a) Date on which the member incurred the expense; and
 - (b) Nature of the expense; and
 - (c) Amount of the expense.
- (3) An expense that exceeds 2,000 dollars must be authorized by the Oregon Processed Vegetable Commission before a member incurs the expense.

(4) For the purposes of this rule, "travel and other expenses" are limited to reasonable expenses. An expense is reasonable if:

(a) It is an actual expense incurred by a member in carrying out official commission business, which is within the member's scope of responsibilities; and

(b) The expense is necessary to enable the member to carry out official commission business.

- (5) For the purposes of this rule, "travel and other expenses" includes:
- (a) Meals.
 - (b) Overnight lodging.
 - (c) Transportation.
 - (d) Postage and shipping.
 - (e) Office supplies necessary to operate a trade show exhibit
 - (f) Cost of attending an event associated with promotion of a commodity, such as a trade show.

(6) For the purposes of this rule, "travel and other expenses" does not include:

(a) Attendance at a sporting event, concert, theatrical performance, movie, or dance venue, including such events that occur at a fair, festival or stock show.

- (b) In-room movie rental.
- (c) Snacks and beverages offered for sale by a place of lodging.
- (d) Long distance telephone charges at a place of lodging.
- (e) Use of a gym or health club.
- (f) Cost of a gift for a host, business associate, commission member or employee, or family member.

(g) Alcoholic beverages.
Stat. Auth.: ORS 292.495, 576.206, 576.265, 576.311, 576.416 & 576.440
Stats. Implemented: ORS 292.495, 576.206(7), 576.265
Hist.: OPVC 1-2008, f. 3-14-08, cert. ef. 4-1-08

647-040-0020

Reimbursement for Hiring a Substitute

(1) As used in OAR647-040-0010, "other expenses" includes expenses incurred by a member of the Oregon Processed Vegetable Commission in employing a substitute to perform duties, including personal duties, normally performed by the member, which the member is unable to perform because of the performance of official duties and which, by the nature of such duties, cannot be delayed without risk to health or safety.

(2) The amount that a member may be reimbursed for expenses incurred in employing a substitute must not exceed \$25 per day, pursuant to ORS 292.495(3).

Stat. Auth.: ORS 292.495
Stats. Implemented: ORS 292.495, 576.206(7)
Hist.: OPVC 1-2008, f. 3-14-08, cert. ef. 4-1-08

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

Rule Caption: Amends minimum math qualifications for acceptance to limited residential electrician apprenticeship program.

Adm. Order No.: BCD 2-2008

Filed with Sec. of State: 2-21-2008

Certified to be Effective: 4-1-08

Notice Publication Date: 1-1-2008

Rules Amended: 918-282-0270

Subject: The rule amends existing minimum mathematical qualifications for acceptance to limited residential electrician apprenticeship program. It allows an applicant for the limited residential electrician apprenticeship who has not completed high-school algebra to be provisionally accepted to the apprenticeship, contingent upon successful completion of an algebra course as part of the apprenticeship curriculum.

Rules Coordinator: Nicole Jantz—(503) 378-4130

918-282-0270

Apprentices

(1) An apprentice:

(a) Shall meet the following minimum requirements:

(A) General journeyman, Class A limited energy technician and Class

B limited energy technician:

(i) Be 17 years of age to apply, 18 years of age to indenture;

(ii) Have a high school diploma, GED, or international equivalency; and

(iii) Have one-year high school algebra, integrated math 2 or its equivalent, with a grade of "C" or better, or equivalent community college mathematics placement test results.

(B) Limited journeyman manufacturing plant, limited maintenance, limited journeyman sign, limited journeyman stage and limited renewable energy technician:

(i) Be 17 years of age to apply, 18 years of age to indenture;

(ii) Have a high school diploma, GED or international equivalency; and

(iii) Have one-year high school mathematics with a passing grade, or equivalent community college mathematics placement test results;

(C) Limited residential:

(i) Be 17 years of age to apply, 18 years of age to indenture;

(ii) Have a high school diploma, GED, or international equivalency; and

(iii) Have one-year high school algebra, integrated math 2 or its equivalent, with a grade of "C" or better, or one-year high school math and completion of an algebra course as part of an approved apprenticeship program, with a grade of "C" or better, or equivalent community college mathematics placement test results.

(b) Shall be licensed;

(c) Assists a journeyman, general supervising electrician, limited renewable energy technician or limited residential electrician on the same job site and the same shift in performing electrical work authorized in the trade, or branch of the trade, in which the licensee is indentured; and

(d) Is not authorized to perform electrical work under a person holding a letter of authority card issued to State of Oregon employees.

(2) Apprentice licenses:

(a) Shall be issued to individuals enrolled in formal electrical apprenticeship programs recognized by the board and the Oregon Bureau of Labor and Industries under ORS Chapter 660; and

(b) May be issued to trainees enrolled in individually approved, employer-sponsored training programs leading to the limited journeyman license in OAR 918-282-0190. Individuals enrolled in these programs may be issued an electrical apprentice license only if the employer's program is approved by the board.

(3) Notwithstanding subsection (1)(c) of this rule, a final term apprentice with at least 6,500 hours of on-the-job training may work under indirect supervision at the discretion of the responsible supervisor on projects not exceeding eight hours duration and limited to 300 volts phase to phase or phase to ground.

Stat. Auth.: ORS 479.730
Stats. Implemented: ORS 479.730
Hist.: DC 15-1987, f. & ef. 5-15-87; Renumbered from 814-022-0980; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-320-0190; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 23-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 6-29-02; BCD 9-2002, f. 3-29-02, cert. ef. 4-1-02; BCD 23-2002, f. 9-13-02 cert. ef. 10-1-02; BCD 2-2008, f. 2-21-08, cert. ef. 4-1-08

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Rule Caption: Implements statewide certificate of occupancy requirements for residential structures.

Adm. Order No.: BCD 3-2008

Filed with Sec. of State: 2-21-2008

Certified to be Effective: 4-1-08

Notice Publication Date: 12-1-2007

Rules Adopted: 918-480-0140

Subject: This rule implements a portion of HB 2478, enacted by the 2007 legislature, by establishing statewide certificate of occupancy requirements for residential structures.

Rules Coordinator: Nicole Jantz—(503) 378-4130

918-480-0140

Certificates of Occupancy — Residential

(1) Prior to occupancy of a new residential dwelling or townhouse the building official must issue a certificate of occupancy in the form and format established by the division, unless a temporary certificate of occupancy is issued by the building official.

ADMINISTRATIVE RULES

(2) This rule applies to a new residential dwelling or townhouse, if the structural permit for construction of the residential dwelling or townhouse was applied for on or after April 1, 2008.

(3) For purposes of this rule, the terms “residential dwelling” and “townhouse” have the same meaning as in section R202 of the **2008 Oregon Residential Specialty Code**.

(4) Before the certificate of occupancy is issued, the general contractor or owner who was issued the structural permit for construction must provide to the building official the contact information and relevant license information for the general contractor, as well as any electrical contractor, H-VAC contractor and plumbing contractor that performed work on the residential dwelling or townhouse.

(5) A building official may revoke a certificate of occupancy or a temporary certificate of occupancy when the residential dwelling or townhouse is in violation of applicable law that poses a threat to health and safety. The revocation must be in writing and state the basis for the revocation of the certificate of occupancy.

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

Stat. Auth.: ORS 455.055

Stat. Implemented: ORS 455.055

Hist.: BCD 3-2008, f. 2-21-08, cert. ef. 4-1-08

Rule Caption: Adopts 2008 Oregon Specialty Code (OPSC) for non low-rise construction.

Adm. Order No.: BCD 4-2008

Filed with Sec. of State: 2-21-2008

Certified to be Effective: 4-1-08

Notice Publication Date: 1-1-2008

Rules Amended: 918-750-0110

Subject: The rule adopts the 2006 edition of the Uniform Plumbing Code (UPC), Chapters 2-11, 13, 14, 15 and 16, Appendices A, B, D, E and I, with amendments, and will be known as the 2008 Oregon Plumbing Specialty Code (OPSC) for non low-rise construction.

Rules Coordinator: Nicole Jantz—(503) 378-4130

918-750-0110

Plumbing Specialty Code

The **2008 Oregon Plumbing Specialty Code** shall consist of the following, adopted by this reference, effective April 1, 2008:

(1) The **2006 Edition of the Uniform Plumbing Code**, Fifth Printing, Chapters 2-11, 13, 14, 15 and 16, Appendices A, B, D, E, and I published by the International Association of Plumbing and Mechanical Officials, except Appendices F, K, L and M are not adopted as part of the Oregon Plumbing Specialty Code;

(2) Useful tables include the following Oregon Installation Standards and IAPMO Installation Standards in the Uniform Plumbing Code, “IS-1A-2007,” “IS-1-2003,” “IS-2-2003,” “IS-3-2003,” “IS-4-2003,” “IS-5-2003,” “IS-6-2003,” “IS-7-2003,” “IS-8-2003,” “IS-9-2003,” “IS-11-2003,” “IS-15-2003,” “IS-18-2003,” “IS-20-2005,” “IS-21-2003,” “IS-26-2003,” “IS-27-2003,” “IS-28-2005,” and “IS-29A-2007”;

(3) **Medical Gas and Vacuum Systems Standard NFPA 99C-2002 Edition** as published by the National Fire Protection Association.

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

Stat. Auth.: ORS 447.020, 455.030 & 455.110

Stats. Implemented: ORS 447.020, 455.030 & 455.110

Hist.: DC 40, f. 1-6-75, ef. 2-1-75; DC 99, f. 9-2-77, ef. 11-1-77; DC 15-1979(Temp), f. 12-21-79, ef. 1-1-80; DC 2-1980, f. 2-14-80, ef. 3-1-80; DC 3-1980, f. & ef. 2-14-80; DC 4-1981, f. 5-15-81, ef. 7-1-81; DC 9-1981, f. & ef. 7-6-81; DC 14-1981(Temp), f. 10-30-81, ef. 11-6-81; DC 15-1982(Temp) f. & ef. 5-5-82; DC 1-1983, f. & ef. 1-3-83; DC 28-1984, f. 9-5-84, ef. 10-15-84; DC 10-1985, f. & ef. 4-1-85; DC 4-1987, f. & ef. 3-4-87; DC 11-1987, f. & ef. 4-21-87; Renumbered from 814-021-0005; BCA 27-1989, f. 12-5-89, cert. ef. 1-1-90; BCA 14-1990, f. & cert. ef. 6-13-90; BCA 42-1991, f. & cert. ef. 12-23-91; BCA 19-1993(Temp), f. 8-26-93, cert. ef. 9-1-93; BCA 26-1993, f. 10-22-93, cert. ef. 11-1-93; BCD 4-1996, f. 2-29-96, cert. ef. 4-1-96; BCD 6-1998, f. 3-2-98, cert. ef. 4-1-98, Renumbered from 918-750-0010; BCD 7-1999, f. 6-21-99, cert. ef. 4-1-2000; BCD 6-2000, cert. ef. 4-1-00; BCD 27-2000, f. 10-13-00 cert. ef. 10-01-01; BCD 24-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 4-2008, f. 2-21-08, cert. ef. 4-1-08

Rule Caption: Adopts the provisions of the 2008 Oregon Low-Rise Residential Dwelling Code.

Adm. Order No.: BCD 5-2008

Filed with Sec. of State: 2-22-2008

Certified to be Effective: 4-1-08

Notice Publication Date: 11-1-2007

Rules Amended: 918-480-0005, 918-480-0010

Subject: This rule adopts the provisions of the Oregon Low-Rise Residential Dwelling Code, known as the 2008 Oregon Residential Specialty Code.

Rules Coordinator: Nicole Jantz—(503) 378-4130

918-480-0005

Minimum Safety Standards for the Design and Construction of Residential Dwellings

(1) The Low-Rise Residential Dwelling Code, identified in ORS 455.610, shall be known as the Oregon Residential Specialty Code.

(2) Effective April 1, 2008, the **2008 Oregon Residential Specialty Code** is the 2006 Edition of the International Residential Code for One- and Two-Family Dwellings, as published by the International Code Council, Inc. and as further amended by the Building Codes Division.

(3) For the purposes of implementing a phase-in period for the **2008 Oregon Residential Specialty Code**, the **2005 Oregon Residential Specialty Code** is adopted for a period of 90-days beginning April 1, 2008 and ending June 30, 2008.

(4) During the 90-day phase-in period established in subsection (3), all building departments in the state are required to accept plans for low-rise residential dwellings designed to either the **2008 Oregon Residential Specialty Code** or to the **2005 Oregon Residential Specialty Code**.

(5) Applicability of code changes to pending applications. Code requirements in effect at the time a plan review or permit application is filed shall control the construction under the application unless the applicant agrees to be controlled by subsequent changes.

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

Stat. Auth.: ORS 455.030, 455.525 & 455.380

Stats. Implemented: ORS 455.610

Hist.: DC 11-1986, f. 6-30-86, ef. 7-1-86; DC 6-1987(Temp), f. & ef. 4-3-87; Renumbered from 814-031-0005; BCA 3-1990, f. 1-30-90, cert. ef. 4-1-90; BCA 7-1990(Temp), f. 3-23-90, cert. ef. 4-1-90; BCA 21-1990, f. 8-28-90, cert. ef. 9-24-90; BCA 30-1990, f. 12-21-90, cert. ef. 1-1-92; BCA 8-1991, f. 4-10-91, cert. ef. 7-1-91; BCA 32-1991(Temp), f. & cert. ef. 9-30-91; BCA 1-1992, f. & cert. ef. 2-6-91; BCA 4-1992(Temp), f. 3-4-92, cert. ef. 3-5-92; BCA 6-1992, f. 3-24-92, cert. ef. 3-27-92; BCA 13-1992, f. 6-29-92, cert. ef. 7-1-92; BCA 28-1992(Temp), f. 12-30-92, cert. ef. 1-1-93; BCA 3-1993(Temp), f. & cert. ef. 3-3-93; BCA 7-1993, f. 4-28-93, cert. ef. 5-1-93; BCA 10-1993(Temp), f. & cert. ef. 6-11-93; BCD 3-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98, Renumbered from 918-480-0000; BCD 3-2000, f. 1-14-00 cert. ef. 4-1-00; BCD 33-2002, f. 12-20-02 cert. ef. 4-1-03; BCD 15-2004, f. 9-10-04, cert. ef. 10-1-04; BCD 5-2005, f. & cert. ef. 3-28-05; BCD 5-2008, f. 2-22-08, cert. ef. 4-1-08

918-480-0010

Amendments to the Oregon Residential Specialty Code

(1) The **Oregon Residential Specialty Code** is adopted and amended pursuant to OAR chapter 918, division 8. Amendments adopted for inclusion into the **Oregon Residential Specialty Code** are placed in this rule, showing the section reference, a descriptive caption and a short description of the amendment.

(2) Effective April 1, 2008:

(a) The **2006 Edition of the Uniform Plumbing Code** as published by the International Association of Plumbing and Mechanical Officials and amended by the division are adopted as the plumbing provisions of the **Oregon Residential Specialty Code**; and

(b) The **2008 Edition of the NFPA 70, National Electrical Code** and amended by the division are adopted as the electrical provisions of the **Oregon Residential Specialty Code**. See OAR chapter 918, division 305 for Oregon amendments to **NFPA 70, National Electrical Code**.

(c) Effective April 1, 2007 Appendix N, Low-Rise Multiple-Family Dwelling Construction is moved from the 2005 Oregon Residential Specialty Code to the **2007 Oregon Structural Specialty Code**.

(3) During the phase-in period established in OAR 918-480-0005(3), plans designed to the **2005 Oregon Residential Specialty Code** must use the plumbing and electrical provisions included in that 2005 code; plans designed to the **2008 Oregon Specialty Residential Code** must use the plumbing and electrical provisions adopted in this rule.

[Publications: Publications referenced are available for review at the division. See division web site for information on where to purchase publications.]

Stat. Auth.: ORS 455.020, 455.110, 455.525 & 455.610

Stats. Implemented: ORS 455.610

Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCA 29-1993, f. 11-24-93, cert. ef. 12-1-93; BCD 6-1995, f. 3-31-95, cert. ef. 4-1-95; BCD 3-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 22-1996(Temp), f. 10-1-96, cert. ef. 10-4-96; BCD 5-1997, f. 3-21-97, cert. ef. 4-1-97; Administrative Reformatting 1-19-98; BCD 3-1998, f. 1-29-98, cert. ef. 4-1-98; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 3-2000, f. 1-14-00 cert. ef. 4-1-00; BCD 19-2000(Temp), f. & cert. ef. 8-15-00 thru 2-10-01; BCD 32-2000, f. 12-27-00, cert. ef. 1-1-01; BCD 3-2001, f. 2-9-01, cert. ef. 3-1-01; BCD 2-2002, f. 3-5-02, cert. ef. 4-1-02; BCD 22-2002(Temp), f. 9-13-02 cert. ef. 10-1-02 thru 3-29-03; BCD 30-2002, f. 12-6-02, cert. ef. 1-1-03; BCD 1-2003(Temp), f. & cert. ef. 1-10-03 thru 3-31-03; BCD 33-2002, f. 12-20-02 cert. ef. 4-1-03; BCD 15-2004, f. 9-10-04, cert. ef. 10-1-04; BCD 5-2005, f. & cert. ef. 3-28-05; BCD 9-2006, f. 6-30-06, cert. ef. 7-1-06; BCD 1-2007, f. 2-15-07, cert. ef. 4-1-07; BCD 5-2008, f. 2-22-08, cert. ef. 4-1-08

ADMINISTRATIVE RULES

Rule Caption: Adopts the 2008 Oregon Electrical Specialty Code (OESC) for non low-rise construction.

Adm. Order No.: BCD 6-2008

Filed with Sec. of State: 3-7-2008

Certified to be Effective: 4-1-08

Notice Publication Date: 1-1-2008

Rules Amended: 918-305-0005, 918-305-0030, 918-305-0100, 918-305-0105, 918-305-0110, 918-305-0120, 918-305-0130, 918-305-0150, 918-305-0160, 918-305-0165, 918-305-0180, 918-305-0190, 918-305-0205, 918-305-0210, 918-305-0250, 918-305-0270, 918-305-0280, 918-305-0290, 918-305-0300, 918-305-0310, 918-305-0320

Subject: The rule adopts the 2008 edition of the National Electrical Code (NEC) with amendments and will be known as the Oregon Electrical Specialty Code (OESC) for non low-rise construction.

Rules Coordinator: Nicole Jantz—(503) 378-4130

918-305-0005

Interpretations

All interpretations dated prior to April 1, 2008, issued by the Building Codes Division, Electrical Safety Section, are withdrawn.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0030

Other Codes or Publications that Impact Electrical Installations

Other codes and publications that impact electrical installations include, but are not limited to those listed below:

(1) Chapter 9 of the **Oregon Structural Specialty Code (OSSC)** as adopted in OAR chapter 918, division 460 relating to fire protection systems and Chapter 3 of the **Oregon Residential Specialty Code** as adopted in OAR chapter 918, division 480 relating to smoke alarm installations.

(2) ORS 455.420 requiring individual electric meters for dwelling units.

(3) Chapter 13 of the **Oregon Structural Specialty Code** as adopted in OAR chapter 918, division 460 which addresses the energy efficiency issues of motors, electric lighting and other electric equipment; and

(4) Chapter 16 and 17 of the **Oregon Structural Specialty Code** as adopted in OAR chapter 918, division 460 which addresses the seismic requirements of nonstructural components and special inspection requirements.

(5) Publications and requirements of the serving utility.

(6) Public Law 101-336, the Americans with Disabilities Act, Part III; Department of Justice Regulations of Friday, July 26, 1991; 28 CFR Part 36, as amended January 1, 1995, including Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Public Law 100-430, the Fair Housing Act and the regulations adopted thereunder.

(7) Chapter 11 of the **Oregon Structural Specialty Code** which relates to the Americans with Disabilities Act for mounting height requirements for electrical and communication receptacles located in affected buildings and structures.

(8) The interconnection of all net-metering facilities and solar photovoltaic systems operated as interconnected power production sources shall comply with the **Oregon Electrical Specialty Code** as adopted in OAR 918-305-0100. In addition, the interconnection of all net-metering facilities utilizing solid-state inverters shall comply with OAR 860-039 Net Metering.

(9) **Oregon Manufactured Dwelling and Park Specialty Code** as adopted in OAR chapter 918, division-500. The electrical installations shall be in accordance with the requirements of the **Oregon Electrical Specialty Code**.

(10) The electrical portions of the installation or product standards identified in OAR 918-306-0005. These standards are informational only and are to be used to clarify code intent. They may be used as installation guides when not specifically referenced or covered in the **Oregon Electrical Specialty Code**. Examples include, but are not limited to, the electrical sections of NFPA 20, NFPA 54, NFPA 99, NFPA 101, NFPA 110, NFPA 780 and NFPA 820.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730 & 757.262

Hist.: DC 13-1987, f. & ef. 5-1-87; Renumbered from 814-022-0610; BCA 17-1990, f. 6-27-90, cert. ef. 7-1-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-290-0020; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 12-2000, f. 6-3-00, cert. ef. 7-1-00; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 19-

2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 29-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0100

Code Adoption of Electrical Specialty Code

(1) The **Electrical Specialty Code** shall consist of the following, adopted by this reference:

(a) NFPA 70-2008, **National Electrical Code (NEC), 2008 Edition**, effective April 1, 2008, subject to the amendments adopted in OAR 918-305-0105 to 918-305-0320. See Table 1-E;

(b) IEEE C2-2002, **National Electrical Safety Code (NEC), 2002 Edition**; and

(c) Oregon Elevator Specialty Code adopted by the Electrical and Elevator Board in OAR 918-400-0455.

(2) In the event of a conflict between the NEC and NESC requirements, the NEC requirement, as amended in subsection (1)(a) of this rule, shall apply.

(3) The electrical code requirements for residential dwellings are adopted under the **Oregon Residential Specialty Code** in OAR chapter 918, division 480.

(4) As used in this rule:

(a) "ANSI" is the American National Standards Institute;

(b) "ASME" is the American Society of Mechanical Engineers;

(c) "IEEE" is the Institute of Electrical and Electronics Engineers; and

(d) "NFPA" is the National Fire Protection Association.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 13-1987, f. & ef. 5-1-87; Renumbered from 814-022-0600; BCA 17-1990, f. 6-27-90, cert. ef. 7-1-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-290-0010; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0105

Amend Article 90 — Introduction

(1) **Section 90.4 Enforcement**. Amended as follows:

(a) **Amend 90.4** by inserting the following after the second paragraph: "Requests for special permission shall be made in writing to the authority having jurisdiction. Special permission must be granted in writing by the authority having jurisdiction and shall be obtained prior to the start of the electrical installation."

(A) Insert the following after Section 90.4: "Section 90.4(A) Where the 2008 NEC requires electrical products to be "listed" or "labeled", the words "listed or "labeled" shall have the same meaning as "certified electrical product" under ORS 479.530.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0110

Amend Article 100 — Definitions

Amend Article 100 by adding the following definition: "Fire protection system means approved devices, equipment and systems or combinations of systems used to detect a fire, activate an alarm, extinguish a fire, control or manage smoke and products of a fire or any combination thereof."

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 29-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0120

Amend Article 110 — Requirements for Electrical Installations

(1) Insert the following after Section 110.8 Wiring Methods:

(a) For the purpose of this article, "schools" are buildings used for education purposes, excluding administrative offices, dormitories or detached utility buildings not used for education or training.

(b) Except where a specific wiring method is required by code, raceway systems, type MI, MC and AC cable or manufactured metallic wiring assemblies shall be the wiring method in the following:

(A) Schools, universities, colleges, child care centers and correctional facilities as defined by the Oregon Structural Specialty Code;

(B) Hospitals as defined in NEC Article 517 ; and

(C) Group I-2 Occupancies and Group E Occupancies as defined in Chapter 3 of the adopted Oregon Structural Specialty Code; and

ADMINISTRATIVE RULES

(D) SR Occupancies classified as SR 2 as defined in Appendix SR of the adopted **Oregon Structural Specialty Code**.

(2) The requirements of subsection (1)(b) of this rule do not apply to:

(a) Spaces in a retail center used for adult training or educational purposes;

(b) SR Occupancies classified as SR 1, SR 3 or SR 4 as defined in Appendix SR or R occupancies classified in Chapter 3 of the adopted **Oregon Structural Specialty Code**;

(c) Foster homes providing family-type care only;

(d) Class 2 and 3 systems installed in conformity with Articles 725, 727, 760, 770, 780 and Chapter 8 of the 2008 NEC; and

(e) Power limited fire protection alarm systems.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 13-1987, f. & ef. 5-1-87; Renumbered from 814-022-0620; BCA 17-1990, f. & cert. ef. 6-27-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-290-0030; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 29-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0130

Amend Article 210 — Branch Circuits

The following provisions of Articles 210 through 225 are amended:

(1) Section 210.8 Ground-Fault Circuit-Interrupter Protection for Personnel. Amended as follows:

(a) Amend 210.8(A) by inserting the following exception: "Exception: A receptacle supplying only a permanently installed fire alarm or burglar alarm system shall not be required to have ground-fault circuit-interrupter protection."

(A) Amend Section 210.8(A) by inserting the following: "FPN: See 760.41(B) and 760.121(B) for power supply requirements for fire alarm systems."

(b) Amend 210.8(A)(2) by inserting the following:

(A) "Exception No. 1 to (2): A single receptacle for each appliance within a dedicated space that, in normal use, is not easily moved from one place to another, that is cord-and-plug connected, and the receptacle is labeled as "not GFCI protected."

(B) "Exception No. 2 to (2): Receptacle ground fault protection shall not be required for a dedicated branch circuit serving a single receptacle for sewage or sump pumps."

(C) "Receptacles installed under the exceptions to 210.8(A)(2) shall not be considered as meeting the requirements of 210.52(G)."

(c) Amend 210.8(A)(4) by inserting the following: "Exception to (4): Receptacle ground fault protection shall not be required for a dedicated branch circuit serving a single receptacle for sewage or sump pumps."

(d) Delete the Fine Print Note and exception to 210.8(A)(5) and replace exception with the following:

(A) "Exception No. 1 to (5): A single receptacle for each appliance within a dedicated space that, in normal use, is not easily moved from one place to another, that is cord-and-plug connected, and the receptacle is labeled as 'not GFCI protected.'"

(B) "Exception No 2 to (5): Receptacle ground fault protection shall not be required for a dedicated branch circuit serving a single receptacle for sewage or sump pumps."

(e) Amend Section 210.8(A)(7) by inserting:

(A) "or other sinks" after the clause "laundry utility and wet bar sinks" in the first sentence of 210.8(A)(7).

(B) "Exception to (7): A single receptacle for each appliance within a dedicated space that, in normal use, is not easily moved from one place to another, that is cord-and-plug connected, and the receptacle is labeled as 'not GFCI protected.'"

(2) Section 210.12 Arc-Fault Circuit-Interrupter Protection. Amended as follows:

(a) Amend Section 210.12(B) to read: "(B) Dwelling Units. All 120-volt, single phase, 15- and 20-ampere branch circuits supplying outlets installed in dwelling unit bedrooms shall be protected by a listed arc-fault circuit interrupter, combination-type, installed to provide protection of the branch circuit."

(b) Amend Section 210.12(B) by adding the following: "Exception No. 3: Electrical outlets dedicated for the use of single station smoke alarms (interconnected or not), nurse call, or medical equipment shall not be required to have AFCI protection."

(3) Section 210.52 Dwelling Unit Receptacle Outlets. Amended as follows:

(a) Amend Section 210.52 by adding: "(I) Alcoves. In dwelling units, alcoves shall have at least one receptacle installed. These outlets shall be in

addition to the required hall outlets. As used in this subsection an Alcove is an area extending from, and returning to, the common wall of hallways, foyers, entries, and landings with a depth of not less than 2 ft. or more and a length of not less than 3 ft."

(b) Amend Figure 210.52(C)(1) Determination of Area Behind a Range, or Counter-Mounted Cooking Unit or Sink. Amend figure to read: "Space exempt from the wall line if $X < 900\text{mm}$ (36 in.)."

(4) Section 225.36 Suitable for Service Equipment. Amend 225.36 by adding the following: "Exception No. 2: In single light pole installations that have the connections to the light pole circuit made in a location accessible only to qualified persons, certified in-line fuse holders shall be allowed, subject to special permission."

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 15-2001(Temp), f. & cert. ef. 11-26-01 thru 5-24-02; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 29-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0150

Amend Article 230 — Services

(1) Section 230.40 Number of Service-Entrance Conductor Sets. Amend 230.40 Exception No. 3 by adding: "When there are continuous metallic paths bonded to the grounding system in the buildings involved, a disconnect, a separate grounded conductor and equipment grounding conductor shall be installed to meet the provisions of Article 225."

(2) Section 230.43 Wiring Methods for 600 Volts, Nominal, or Less. Amend 230.43 by adding the following to the end of the first paragraph: "Exception: Items (13) and (15) are limited to traffic control devices and highway lighting poles."

(3) Section 230.70 General. Amend 230.70(A)(1) by adding the following: "Exception: In existing installations where only the service panel or meter base is changed and the existing service conductors meet the ampacity requirements, or the existing conduit is of sufficient size to install new conductors, the panel may remain at the present location providing all requirements of Sections 110.26 and 240.24 are met. This exception does not require a main disconnect located nearest the point of entry."

(4) Section 230.95 Ground-Fault Protection of Equipment. Amend 230.95(C) to read: "The ground-fault protection system shall be performance tested when first installed on the site. The test shall be conducted in accordance with instructions provided with the equipment. This test shall be performed by persons having proper training and experience required to perform and evaluate the results of such performance testing. A written record of this test shall be made available to the authority having jurisdiction. This report shall be signed by the person(s) performing this test."

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 13-1987, f. & ef. 5-1-87; BCA 13-1989, f. & cert. ef. 5-24-89; Renumbered from 814-022-0630; BCA 17-1990, f. & cert. ef. 6-27-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-290-0040; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 29-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0160

Amend Article 250 — Grounding

(1) Section 250.24 Grounding Service-Supplied Alternating-Current Systems. Amended as follows:

(a) Amend 250.24(A)(1) by inserting the following: "Exception: When the electric utility has installed a ground fault protection system ahead of the customer's service equipment, no bonding or electrical connection from the grounding electrode system shall be made to the grounded service conductor on the load side of the utility ground fault sensing device. The neutral or grounded service conductor, however, shall be grounded on the line side of the first ground fault sensor in a manner otherwise required at the customer's service equipment. The grounding electrode conductor shall be run to an equipment grounding bus or terminal at the service equipment as long as the equipment grounding conductor and the grounded neutral conductor are not connected to each other at this point. The on-site ground fault test required by Section 230.95 shall not be performed prior to the above installation requirements. Warning signs shall be installed."

(b) Amend Section 250.24(B) by inserting the following after Exception No. 2: "Exception No. 3. When the electric utility has installed a ground fault protection system ahead of the customer's service equipment and if the operation of the ground fault system relies on the absence of the main bonding jumper at the service equipment but includes an otherwise satisfactory main bonding jumper as a part of its sensing device, the main

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bonding jumper shall not be installed at the service equipment which would otherwise bond the grounded service conductor to the equipment ground. The on-site ground fault test required by Section 230.95 shall not be performed prior to the above installation requirements. Warning signs shall be installed.”

(2) Section 250.32 Buildings or Structures Supplied by a Feeder(s) or Branch Circuits(s). Amended as follows:

(a) Amend the first sentence of 250.32(A) to read: “Building(s) or structure(s) supplied by feeder(s) or branch circuits(s) shall have a grounding electrode or grounding electrode system installed in accordance with 250.50.”

(b) Amend 250.32(B) to read: “Grounded Systems. For a grounded system at the separate building or structure, the connection to the grounding electrode and grounding or bonding equipment, structures, or frames required to be grounded or bonded shall comply with either 250.32(B)(1) or (B)(2) of the 2005 OESC.”

(c) Amend 250.32(D) to read as follows: “Where one or more disconnecting means supply one or more additional buildings or structures under single management, and where these disconnecting means are located remote from those buildings or structures in accordance with the provisions of 225.32, Exceptions Nos. 1 and 2, all of the conditions of the 2005 OESC Section 250.32(D) shall be met.”

(3) Section 250.52 Grounding Electrodes. Amended as follows:

(a) Amend 250.52(A)(3) by inserting the following: “In new construction with steel reinforced concrete footings, a concrete-encased grounding electrode connected to the grounding electrode system is required. The installation shall meet the requirements of Section 250.50. When a concrete encased electrode system is used, a minimum size of 1/2-inch reinforcing bar or rod shall be stubbed up at least 12 inches above the floor plate line or floor level, whichever is the highest, near the service entrance panel location.”

(b) Amend 250.52(B)(2) by inserting the following: “(3) In existing electrical installations, when a service change or upgrade occurs, an existing metal underground water pipe shall not be used unless the metal underground water pipe has been verified as suitable for continued use as a grounding electrode. An existing metal underground water pipe shall be bonded to the new grounding electrode system as required by 250.104(A).”

(4) Section 250.56 Resistance of Rod, Pipe, and Plate Electrodes. Amend by inserting the following at the end of the first sentence of 250.56: “For permanent installations where the only grounding electrode is a single ground rod, pipe or plate, documented verification of 25 ohms or less shall be provided. Documented verification shall be done by a recognized method, provided by the installer, and made available for the electrical inspector.”

(5) Section 250.94 Bonding for Other Systems. Amend the first sentence of 250.94 to read: “An intersystem bonding termination or exposed and supported length of # 6 bare copper conductor for connecting intersystem bonding and grounding conductors required for other systems shall be provided external to enclosures at the service equipment and at the disconnecting means for any additional buildings or structures.

(6) Section 250.118 Types of Equipment Grounding Conductors. Amend by inserting the following after 250.118(14): “Where metallic conduit is installed on roof tops, an equipment grounding conductor shall be provided within the raceway and sized per Section 250.122.”

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 13-1987, f. & ef. 5-1-87; Renumbered from 814-022-0660; BCA 17-1990, f. & cert. ef. 6-27-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-290-0070; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 29-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0165

Amend Article 334 — Nonmetallic-Sheathed Cable: Types NM, NMC, and NMS

(1) Section 334.12 Uses Not Permitted. Amend 334.12(A)(2) by inserting the following exception: “Exception: Types NM, NMC, and NMS cables shall be permitted where installed in accordance with 334.15.”

(2) Section 334.15 Exposed Work. Amended as follows:

(a) Amend 334.15(B) by adding the following to the end of the Section: “Exposed nonmetallic sheathed cable shall be protected where it is installed horizontally less than 8 feet above the floor. Exposed nonmetallic sheathed cable less than 8 feet above the floor that enters the top or bottom of a panelboard shall be protected from physical damage by conduit, raceway, 1/2-inch plywood or 1/2-inch drywall.”

(b) Amend 334.15(C) by deleting “and crawlspaces” from the subsection heading.

(3) Amend the first sentence of 334.15(C) to read: “Where cable is run at angles with joists in unfinished basements, it shall be permissible to secure cables not smaller than two 6 AWG or three 8 AWG conductors directly to the lower edge of the joists.”

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0180

Amend Article 394 — Concealed Knob-and-Tube Wiring

Section 394.12 Uses Not Permitted. Add the following to the end of Section 394.12: Exception: The provisions of Section 394.12 shall not be construed to prohibit the installation of loose or rolled thermal insulating materials in spaces containing existing knob-and-tube wiring, provided all the following conditions are met:

(1) The visible wiring shall be inspected by a certified electrical inspector or a general supervising electrician employed by a licensed electrical contractor.

(2) All defects found during the inspection shall be repaired prior to the installation of insulation.

(3) Repairs, alterations or extensions of or to the electrical systems shall be inspected by a certified electrical inspector.

(4) The insulation shall have a flame spread rating not to exceed 25 and a smoke density not to exceed 450 when tested in accordance with ASTM E84-91A 2005 Edition. Foamed in place insulation shall not be used with knob-and-tube wiring.

(5) Exposed splices or connections shall be protected from insulation by installing flame resistant, non-conducting, open top enclosures which provide three inches, but not more than four inches side clearances, and a vertical clearance of at least four inches above the final level of the insulation.

(6) All knob-and-tube circuits shall have overcurrent protection in compliance with the 60 degree C column of Table 310-16 of NFPA 70-2008. Overcurrent protection shall be either circuit breakers or type S fuses. The type S fuse adapters shall not accept a fuse of an ampacity greater than permitted in Section 240.53.

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-290-0085; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 29-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0190

Amend Articles 400 Flexible Cords and Cables through 406 Receptacles, Cord Connectors, and Attachment Plugs (Caps)

(1) Section 400.7 Uses Permitted. Amend Section 400.7 by adding the following: “(11) Listed assemblies of fixtures and controllers, approved by the Federal Aviation Administration.”

(2) Section 406.11 Tamper-Resistant Receptacles in Dwelling Units. Amend 406.11 by adding the following: “Non-tamper resistant receptacles shall be permitted until October 1, 2008.”

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 13-1987, f. & ef. 5-1-87; Renumbered from 814-022-0680; BCA 17-1990, f. & cert. ef. 6-27-90; BCA 12-1993, f. 6-23-93, cert. ef. 7-1-93; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-290-0090; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0205

Amend Article 422 Appliances through 424 Fixed Electric Space-Heating Equipment

(1) Section 422.34 Unit Switch(es) as Disconnection Means. Amend 422.34 by adding the following to the end of the section: “Unit switches on ranges, ovens and dishwashers shall not be considered the disconnect required by this section.”

(2) Section 424.3 Branch Circuits. Amend 424.3(A) by adding the following to the end of the subsection: “New equipment may be connected to an existing circuit that does not serve fixed electric space-heating equipment. The new equipment may be reconnected to that circuit, provided the equipment being installed has an ampere rating of not more than 50 percent of the branch circuit rating.”

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: f. 8-1-02, cert. ef. 10-1-02; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

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918-305-0210

Amend Article 500.8 Equipment

Article 500.8(A) is amended to read: "Suitability of identified equipment" as used in Article 500.8(A) means that equipment meets the requirements of ORS 479.760.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0250

Amend Article 620 Elevators, Dumbwaiters, Escalators, Moving Walks, Wheelchair Lifts and Stairway Chair Lifts

(1) Section 620.1 Scope. Amend 620.1 by deleting FPN No. 1 and replacing it with the following: "FPN No.1: For further information, see the **Oregon Elevator Specialty Code** as adopted in OAR chapter 918, division 400."

(2) Section 620.2 Definitions. Amend 620.2 by adding: "Separate Branch Circuit. A circuit dedicated solely for the purpose intended without other devices, systems or equipment connected to the circuit."

(3) Section 620.5 Working Clearances. Amend 620.5 by adding: "Where machine room doors swing inward, the arc of the door shall not encroach on those clearances required by Section 110.26(A)."

(4) Section 620.11 Insulation of Conductors. Amend 620.11(A) to read: "The conductors of the hoistway door interlocks from the hoistway riser shall be flame-retardant and suitable for a temperature of not less than 200° C (392°F). Conductors shall be Type SF or equivalent except where not required by the Elevator Safety Code (ASME A17.1)."

(5) Section 620.37 Uses Permitted. Amend 620.37(A) by adding: "Conduits and raceways necessary for the connection of such devices shall only enter hoistways and machine rooms to the extent necessary to connect the device(s) attached thereto."

(6) Section 620.51 Disconnecting Means. Amended as follows:

(a) Amend 620.51(B): "When provided, this disconnecting means shall be located in the elevator control room or control space. The installation shall comply with the requirements of NFPA 72 as adopted in OAR 918-306-0005."

(b) Amend 620.51(C) by adding: "Where machine rooms are provided, the disconnecting means required by Section 520.51 shall be located within 610 mm (24 inches) of the open side of the machine room access door. Where more than one disconnect is required for a multi-car group, the disconnects shall be adjacent to each other with the first disconnect located within 610 mm (24 inches) of the open side of the machine room access door. Measurement shall be taken from the edge of the disconnect nearest the machine room door."

(A) Amend 620.51(C)(4) to read: "On platform lifts and stairway chairlifts, the disconnecting means shall be located within sight of the motor controller or lift and within 1.83 m (six feet) of the motor controller. The disconnecting means shall not be located in the runway enclosure."

(B) Amend Section 620.51(C) by adding: "(5) Residential installations. A disconnecting means shall be required to be placed within sight of the controller or lift. Where such devices are supplied with flexible cord and plug type connectors, the supply receptacle shall be switched by the disconnecting means. The disconnecting means does not require overcurrent protection, provided such protection is supplied by the branch circuit overcurrent device. In all other respects the disconnecting means shall comply with the requirements of this section."

(7) Add new section: "Section 620.86 Flexible Metal Conduit. Where flexible metal conduit is utilized between the disconnecting means specified in Section 620.51 and the elevator controller, an equipment grounding conductor shall be provided within the raceway and sized per Section 250.122 and Table 250.122."

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

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 1-2000, f. 1-6-00, cert. ef. 4-1-00; BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0270

Amend Article 692 — Fuel Cell Systems

Section 692.6 Listing Requirement. Amend 692.6 to read: "The fuel cell system shall be certified for its intended application prior to final approval."

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 19-2002, f. 8-1-02, cert. ef. 10-1-02; BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0280

Amend Chapter 7 Special Conditions

(1) Chapter 7 Special Conditions. Amend Chapter 7 by adding the following preface to the Chapter: "Building Officials and inspectors administering and enforcing the state building code under ORS 455.148 and 455.150, shall not inspect for compliance with Sections 700.27, 701.18, or 708.54, refuse to perform or finalize inspections, refuse to issue a certificate of occupancy, or use other methods to ensure compliance with Sections 700.27, 701.18, or 708.54. If requested by the Building Codes Division, the Supervising Electrician must demonstrate that the requirements of Sections 700.27, 701.18, or 708.54, as appropriate, have been met. In determining whether a system meets the requirements of Sections 700.27, 701.18, or 708.54, the division may request the local jurisdiction to perform an inspection or collect the relevant information, so that the division may review and make a determination."

(2)(a) Section 700.27 Coordination. Amend 700.27 by adding the following to the end of the first paragraph: "For the purposes of this section, supply side overcurrent protection means those protective devices on the emergency system supply side and not on the normal power supply side. The protection shall be coordinated using the higher of the normal power supply fault current levels or emergency system fault current levels."

(b) Amend 700.27 by inserting the following: "Exception No. 2: The requirements for selective coordination described in 700.27 are not required where the emergency system was installed prior to April 1, 2005. For new emergency systems that are supplied from an existing emergency system installed prior to April 1, 2005, the new portion of the emergency system must comply with NEC 700.27. The ground fault sensing function of overcurrent protective devices will only be required to selectively coordinate with the ground fault sensing functions of other protective devices."

(3)(a) Section 701.18 Coordination. Amend by adding the following after 701.18: "For the purposes of this section, supply side overcurrent protection means those protective devices on the emergency system supply side and not on the normal power supply side. The protection shall be coordinated using the higher of the normal power supply fault current levels or emergency system fault current levels."

(b) Amend Section 701.18 by inserting the following: "Exception No. 2: The requirements for selective coordination described in 701.18 are not required where the required standby system was installed prior to April 1, 2005. For new emergency systems that are supplied from an existing required standby system installed prior to April 1, 2005, the new portion of the required standby system must comply with NEC 701.18. The ground fault sensing function of overcurrent protective devices will only be required to selectively coordinate with the ground fault sensing functions of other protective devices."

(4)(a) Coordination. Amend 708.54 by adding the following to the end of Section 708.54: "For the purposes of this section, supply side overcurrent protection means those protective devices on the emergency system supply side and not on the normal power supply side. The protection shall be coordinated using the higher of the normal power supply fault current levels or emergency system fault current levels."

(b) Amend Section 708.54 by inserting the following: "Exception: The requirements for selective coordination described in 708.54 are not required where the critical operations power system(s) was installed prior to April 1, 2005. For new critical operations power system(s) that are supplied from an existing emergency system installed prior to April 1, 2005, the new portion of the critical operations power system(s) must comply with NEC 708.54. The ground fault sensing function of overcurrent protective devices will only be required to selectively coordinate with the ground fault sensing functions of other protective devices."

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0290

Amend Article 725 Class 1, Class 2 and Class 3 Remote-Control, Signaling, and Power-Limited Circuits through 760 Fire Alarm Systems

(1) Section 725.24 Mechanical Execution of Work. Amend 725.24 by replacing the last sentence with: "This installation shall also conform with 300.4 and 300.11."

(2) Section 760.24 Mechanical Execution of Work. Amend 760.24 by replacing the last sentence with "The installation shall also conform with 300.4 and 300.11."

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

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918-305-0300

Amend Article 770 — Optical Fiber Cables and Raceways

Section 770.24 Mechanical Execution of Work. Amend 770.24 by replacing the last sentence with “The installation shall also conform with 300.4 and 300.11.”

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0310

Amend Article 800 — Communications Circuits

Section 800.24 Mechanical Execution of Work. Amend 800.24 by replacing the last sentence with “The installation shall also conform with 300.4 and 300.11.”

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

918-305-0320

Amend Article 820 — Community Antenna Television and Radio Distribution Systems

Section 820.24 Mechanical Execution of Work. Amend 820.24 by replacing the last sentence with “The installation shall also conform with 300.4 and 300.11.”

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: BCD 23-2004, f. 12-15-04, cert. ef. 4-1-05; BCD 6-2008, f. 3-7-08, cert. ef. 4-1-08

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

Rule Caption: New definition of successor employer.

Adm. Order No.: OSHA 1-2008

Filed with Sec. of State: 2-22-2008

Certified to be Effective: 3-1-08

Notice Publication Date: 1-1-2008

Rules Amended: 437-001-0015

Subject: Some Oregon employers change their business status in a successful effort to avoid responsibility for prior and future enforcement actions. The solution was to modify the statute to enable OR-OSHA to hold successor employers responsible for prior OR-OSHA issued violations for purposes of classifying a current violation as a repeat or for attributing knowledge of prior OR-OSHA issued violations to the current employer.

This rulemaking is a result of House Bill 2223 passed into law by the 2007 Oregon Legislature. Oregon OSHA amends the definition rule in Division 1, General Administrative Rules, to establish criteria that determines who is the successor employer. This is permanent rulemaking that replaces a temporary rule expiring on February 29, 2008. The text is identical.

Please visit OR-OSHA's website at www.orosha.org.

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-001-0015

Definitions

The following definitions shall apply to OAR 437, unless the context requires otherwise:

(1) Abatement — Action by an employer to comply with a cited violation of the Oregon Safe Employment Act.

(2) Accepted Disabling Claims — Claims accepted for disabling occupational injuries or illnesses only. A disabling injury or illness entitles the worker to compensation for disability or fatality. This type of claim excludes temporary total disability suffered during the first three calendar days after the employee leaves work as a result of the injury unless the worker is an inpatient in a hospital.

(3) Accepted Disabling Claims Rate — The ratio of accepted disabling claims to annual average employment, times 100. Claims and employment figures are based upon the best knowledge of the Department at the time the rate is calculated (ADCR = Number of claims times 100 divided by the number of employees).

(4) Act — The Oregon Safe Employment Act (ORS 654.001 to 654.295, 654.750 to 654.780, and 654.991).

(5) Administrator — The Administrator of the Oregon Occupational Safety and Health Division (OR-OSHA).

(6) Affected employee — An employee who, in the course and scope of employment, may be or may have been exposed to a condition or practice described in a citation, order, application for an extension date or variance.

(7) Agent of the employer — The manager, superintendent, foreperson or other person in charge or control of all or part of the place of employment.

(8) Appeal — A written request for a hearing in which to contest a citation, notice or order issued by the Division. Unless the context otherwise requires, any writing which clearly contests, objects to or seeks relief from a Division citation, notice or order shall be construed as an appeal.

(9) Audiometric Zero — The lowest sound pressure level that the average, young adult with normal hearing can hear.

(10) Board — The Workers' Compensation Board created by ORS 656.712.

(11) Catastrophe — An accident in which two or more employees are fatally injured, or three or more employees are admitted to a hospital or an equivalent medical facility.

(12) Citation — A document issued by the Division pursuant to ORS 654.071 to cite a violation. A citation may include a notice of penalty and a correction order.

(13) Complaint — A written or oral report from an employee, employee representative or other person that an occupational safety or health violation may exist at a place of employment. A complaint may be classified as one of the following:

(a) Imminent danger;

(b) Serious;

(c) Other than serious.

(14) Compliance Officer — A designated Division employee whose responsibility is to conduct inspections or investigations to identify possible violations and hazards and to propose citations, penalties and correction dates, and to assist employers and employees with information to correct violations and hazards.

(15) Comprehensive Consultation — is a consultation to cover the entire establishment and entails a physical hazard assessment evaluation, reviews of records, written programs and the employer's illness and injury prevention plan. Comprehensive consultations include a written report by the provider including findings, recommendations, and the guidance necessary to resolve the problems noted in the report.

(16) Consultant — A designated Division employee whose responsibility is to provide a full range of occupational safety and health assistance including, but not limited to, providing employers, employees and other agency staff with information, advice and recommendations on maintaining safe employment or a place of employment; on correcting violations or hazards; and on applicable occupational safety and health rules, techniques, devices, methods, practices and development of safety and health programs.

(17) Correction order — A written Division order which directs a person to stop a violation within a given period of time. The term also includes a Red Warning Notice issued pursuant to OAR 437-001-0096.

(18) Days Away, Restricted, or Transferred (DART) — The number of lost workday injury and illness cases experienced by 100 full-time workers (DART rate = Number of lost workday cases times 200,000 divided by the number of employee hours worked).

NOTE: Lost Workday cases include both days away from work and days of restricted time.

(19) Decibel (dB) — Unit of measurement of sound level. For purposes of this rule, decibels refer to the combined average of the readings at 2000, 3000, and 4000 Hz on the audiogram.

(20) Department — The Department of Consumer and Business Services.

(21) Director — The Director of the Department of Consumer and Business Services, or the Director's designee.

(22) Division — The Oregon Occupational Safety and Health (OR-OSHA) Division of the Department of Consumer and Business Services.

(23) Emphasis Program — A special program that targets Division activity to industries that, according to national or state data, have a high potential for serious injuries or illnesses.

(24) Employee — Any individual who is currently employed or formerly employed, including a minor whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, financial or otherwise, subject to the direction and control of an employer, and includes salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other public corporations, or any individual who is provided with workers' compensation coverage as a subject worker pursuant to ORS Chapter 656, whether by operation of law or by election.

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(25) Employee exposure record — A record of monitoring or measuring which contains a qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

(26) Employee medical record — A record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(a) The results of medical examinations and tests;

(b) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(c) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

(27) Employee representative — A bargaining unit representative, or an individual selected by employees, who serves as their spokesperson.

(28) Employer.

(a) Any person who has one or more employees, or

(b) Any sole proprietor or member of a partnership who elects workers' compensation coverage as a subject worker pursuant to ORS 656.128, or

(c) Any successor or assignee of an employer. For purposes of this definition and ORS 654.005(5)(c), a business or enterprise is considered to be substantially the same entity as the predecessor employer if:

(A) A majority of the current business or enterprise is owned by the former owners or their immediate family members, and

(B) One or more of the following criteria exist for both the current and predecessor business or other enterprise: Substantially the same type of business or enterprise. Similar jobs and working conditions. A majority of the machinery, equipment, facility, or methods of operation. Similar product or service. A majority of the same supervisory personnel. A majority of the same officers and directors.

NOTE: Not every element need be present to find an employer to be a successor, the facts will be considered together to reach a determination.

(29) Employer representative — An individual selected by the employer, to serve as spokesperson or, in the absence of a selected spokesperson, the person in charge of the place of employment at the time of the inspection.

(30) Environmental Exposure Sampling — Sampling of the workplace environment, performed for a variety of reasons including, identification of contaminants present and their sources, determination of worker exposures and checking the effectiveness of controls.

(31) Establishment — An establishment is a single physical location doing business or offering services or with industrial operations. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas and sanitary services; and similar operations, the establishment is the main or branch offices, terminals, stations, etc. that either supervise such activities or are the base from which personnel carry out these activities.

(a) One location/multiple establishments. Normally, one business location has only one establishment. Under limited conditions, two or more separate businesses that share a single location are separate establishments. An employer may divide one location into two or more establishments only when:

(A) Each of the establishments represents a distinctly separate business;

(B) Each business is engaged in a different economic activity;

(C) No one industry description in the Standard Industrial Classification Manual (1987) applies to the joint activities of the establishments; and

(D) Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information. For example, if an employer operates a construction company at the same location as a lumber yard, each business can be a separate establishment.

(b) Multiple locations/one establishment. Only under certain conditions. An employer may combine two or more physical locations into a single establishment only when:

(A) The employer operates the locations as a single business operation under common management;

(B) The locations are all near each other; and

(C) The employer keeps one set of business records for all the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. For example, one

manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

(c) Telecommuting from home. For employees who telecommute from home, the employee's home is not a business establishment, do not keep a separate 300 Log. Link employees who telecommute to one of your establishments under 437-001-0700(15)(c).

(32) Farm operation — Any operation involved in the growing or harvesting of crops or the raising of livestock or poultry.

(33) Filed — A document shall be deemed to have been filed on the date of postmark if mailed or on the date of receipt if transmitted to OR-OSHA, DCBS, or the WCB by other means.

(34) First aid — Any one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters or similar injuries which do not ordinarily require medical care. Such one-time treatment and subsequent observation is considered first aid even though provided by a physician or registered professional personnel.

(35) Fixed place of employment — The entire facility maintained by an employer at one general location, regardless of the size or number of departments or buildings in the facility. For the purpose of determining repeat violations fixed place of employment includes employers or owners engaged in construction activity who will be at a single worksite continuously for more than 24 months.

(36) Hazard — A condition, practice or act which could result in an injury or illness to an employee.

(37) Health Hazard — Health hazards mean carcinogens, lead, silica, toxic metals and fumes, vapors or gases, toxic or highly corrosive liquids or chemicals, chemical sensitizers, pesticides, fungicides, solvents, biological agents and harmful physical stress agents.

(38) Imminent danger — A condition, practice or act which exists in any place of employment and could reasonably be expected to cause death or serious physical harm immediately.

(39) Injury or illness — An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning.

(Note: Record injuries and illnesses only if they are new, work-related cases that meet one or more of the recording criteria.)

(40) Inspection — An official examination of a place of employment by a Compliance Officer to determine if an employer is in compliance with the Act. An inspection may be classified as:

(a) Programmed.

(A) Routine inspection — An inspection of a place of employment which is made based principally on that place of employment's record of workers' compensation claims or Standard Industrial Classification and number of employees;

(i) Emphasis inspection — An inspection made in response to a national or state Emphasis Program.

(B) Periodic inspection — An inspection made because of a time-related factor, including, but not limited to, intermittent or seasonal employment activity;

(C) Area inspection — An inspection made because of a geographic factor;

(D) Random inspection — An inspection scheduled and conducted pursuant to written neutral administrative standards.

(b) Unprogrammed.

(A) Follow-up inspection — An inspection made to determine if a previously cited violation has been corrected or after a request for an extension, a stay of correction time or a variance has been denied;

(B) Complaint inspection — An inspection made in response to a complaint;

(C) Accident investigation — A systematic appraisal of an accident sequence to determine causal factors, corrective actions and preventative measures; and

(D) Referral inspection — An inspection made in response to a referral.

(41) Letter of Corrective Action — A letter stating the corrective action(s) taken by the employer to comply with the violation(s) that were not corrected at the time of the inspection.

(42) Lost workdays — The actual number of days after, but not including, the day of injury or illness during which the employee would have worked, but could not perform all or any part of his/her normal assignment during all or any part of the employee's next regular workday or shift because of the occupational injury or illness.

(43) Lost Workday Cases Incidence Rate (LWDCIR) (Also see DART) — The number of lost workday injury and illness cases experi-

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enced by 100 full-time workers (LWDCIR = Number of lost workday cases times 200,000 divided by the number of employee hours worked).

(44) Medical treatment — Treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel, nor does it include treatment ordinarily considered diagnostic or preventative in nature.

(45) North American Industry Classification System (NAICS) — A classification system developed by the Executive Office of the President/Office of Management and Budget, for use in classifying establishments by the type of activity in which they are engaged. Each establishment is assigned an industry code for its major activity. The 2002 edition of the NAICS manual is used for coding.

(46) Owner — Every person having ownership, control or custody of any place of employment or of the construction, repair or maintenance of any place of employment.

(47) Person — 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 or subdivisions.

(48) Personal exposure samples — Measurement of contaminants or physical agents to characterize the environment in the breathing or hearing zone of individual workers in order to evaluate their specific work exposures. Personal samplers are placed on the worker to obtain either one continuous sample covering a portion of the workday or consecutive samples covering a stated time period.

(49) Physician or Other Licensed Health Care Professional — A physician or other licensed health care professional is an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows them to independently perform, or be delegated the responsibility to perform, the activities described by this regulation.

(50) Place of employment — Includes every place, whether fixed or movable, whether indoors or out or underground, and the premises and structures appurtenant thereto, where either temporarily or permanently an employee works or is intended to work and every place where there is carried on any process, operation or activity related, either directly or indirectly, to an employer's industry, trade, business or occupation, including a labor camp provided by an employer for his/her employees or by another person engaged in providing living quarters or shelters for employees, but place of employment does not include any place where the only employment involves nonsubject workers employed in or about a private home. Any corporate farm where the only employment involves the farm's family members, including parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, nieces, nephews or grandchildren.

(51) Record — Any recorded information regardless of its physical form or character.

(52) Recordable occupational injuries or illnesses — Any occupational injuries or illnesses which result in:

(a) Fatalities, regardless of the time between the injury and death, or the length of the illness;

(b) Lost workday cases, other than fatalities, that prevent the employee from performing his/her normal assignment during any part of the employee's next regular, or any subsequent workday or shift; or

(c) Nonfatal cases, without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

(53) Referral — A notification made to the responsible agency of safety or health violations observed by a Division employee, other federal, state or local government representatives, or the media.

(54) Rule — Any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedures or practice requirements of the agency and is adopted according to the Administrative Procedure Act. The term includes the amendment or repeal of a prior rule, but does not include, unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public.

(55) Scheduling List — An electronic or paper list of places of employment or employers scheduled for inspection. Lists can be in electronic form, paper form or both.

(56) Serious physical harm:

(a) Injuries that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a part of the body. Examples of such injuries are amputations, fractures (both simple and compound) of bones, cuts involving significant bleeding or extensive suturing, disabling burns, concussions, internal injuries, and other cases of comparable severity.

(b) Illnesses that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a part of the body, even though the effects may be cured by halting exposure to the cause or by medical treatment. Examples of such illnesses are cancer, pneumoconiosis, narcosis, or occupational infections (caused by biological agents), and other cases of comparable severity.

(57) Standard Industrial Classification (SIC) — A classification system developed by the Office of Statistical Standards, Executive Office of the President/Office of Management and Budget, for use in classifying establishments by the type of activity in which they are engaged. Each establishment is assigned an industry code for its major activity, which is determined by the value of receipts or revenue for services rendered or products produced, or in some cases by the employment or payroll. The 1987 edition of the SIC manual is used for coding.

(58) Standard Threshold Shift (STS) — A change in hearing threshold relative to the baseline audiogram of an average of 10 dB or more in either ear.

(59) Substantial failure to comply — When an employer engaged in the production of crops intended for human consumption fails to provide acceptable and accessible toilet facilities, handwashing facilities or drinking water, and that failure exposes affected workers to a serious hazard likely to result in an injury or illness.

(60) Suspended penalty — A penalty which is determined but not assessed.

(61) Variance — The written authority given by the Division to an employer permitting the use of a specific alternative means or method to comply with the intent of a rule. Specific types of variances are:

(a) Permanent — A variance that remains in effect until modified or revoked in accordance with OAR 437-001-0430;

(b) Temporary — A variance granted for a stated period of time to permit the employer to achieve compliance with a new rule;

(c) Research — A variance granted for a stated period of time to allow industrial or governmental research designed to demonstrate or validate new and improved safety or health techniques or products; and

(d) Interim order — The temporary authority for an employer to use an alternative means or method by which the employer effectively safeguards the safety and health of employees until final action can be taken on the variance request.

(62) Violation — The breach of a person's duty to comply with an Oregon occupational safety or health statute, regulation, rule, standard or order.

(a) Specific classifications of violations are:

(A) Serious violation — A violation in which there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations or processes which have been adopted or are in use in a place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation;

(B) Other than serious violation — A violation which is other than a serious or minimal violation; and

(C) Minimal violation — A violation which does not have a direct or immediate relationship to the safety or health of employees.

(b) Specific types of the above classifications are:

(A) Willful violation — a violation that is committed knowingly by an employer or supervisory employee who, having a free will or choice, intentionally or knowingly disobeys or recklessly disregards the requirements of a statute, regulation, rule, standard or order.

(B) Unabated violation — A violation that has not been fully corrected by the date ordered.

(C) Repeat violation:

(i) An employer's second or subsequent violation of the requirements of the same statute, regulation, rule, standard or order.

(ii) Subsequent violations shall not be considered to be a repeat when more than 36 months have elapsed and the violation has not reoccurred.

(iii) In these rules, Repeat, Repeated and Repeatedly are used as synonyms.

(D) First-instance violation — An employer's first violation of a particular statute, regulation, rule, standard or order.

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(E) Egregious — Those conditions which normally constitute a flagrant violation of the OSEAct or OR-OSHA standards or regulations such that each instance of the violation is cited separately.

(c) Combined violation — Multiple violations of the same statute, regulation, rule, standard or order within an establishment which have been combined as one violation to indicate an overall lack of compliance with a safety or health statute, regulation, rule, standard or order.

(d) Grouped violation — Multiple violations of different statutes, regulations, rules, standards or orders, within an establishment which have been combined as one violation:

(A) To indicate an increase in the severity or probability of the violation, or

(B) Recordkeeping and posting requirements involving the same document, or

(C) The violations are so closely related as to constitute a single hazardous condition.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD , 7-1979, f. 8-20-79, ef. 9-1-79; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; WCD 9-1983, f. & ef. 11-15-83; WCD 2-1984, f. 3-2-84, ef. 3-15-84; WCD 12-1984, f. 9-20-84, ef. 11-1-84; WCD 9-1986, f. 10-7-86, ef. 12-1-86; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 10-1990(Temp), f. & cert. ef. 5-31-90; OSHA 24-1990, F. & cert. ef. 10-10-90; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 6-1994, f. & cert. ef. 9-30-94; OSHA 2-1996, f. & cert. ef. 6-13-96; OSHA 5-1998, f. & cert. ef. 10-15-98; OSHA 7-1999, f. & cert. ef. 7-15-99; OSHA 11-1999(Temp), f. & cert. ef. 10-20-99 thru 4-14-00; OSHA 4-2000, f. 4-14-00, cert. ef. 4-15-00; OSHA 11-2001, f. 9-14-01, cert. ef. 1-1-02; OSHA 7-2002, f. & cert. ef. 11-15-02; OSHA 6-2003, f. & cert. ef. 11-26-03; OSHA 7-2006, f. & cert. ef. 9-6-06; OSHA 5-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; OSHA 1-2008, f. 2-22-08, cert. ef. 3-1-08

Rule Caption: Adopt changes to Division 7, Forest Activities/Machine Protective Structures.

Adm. Order No.: OSHA 2-2008

Filed with Sec. of State: 3-5-2008

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Notice Publication Date: 1-1-2008

Rules Amended: 437-007-0775, 437-007-0780

Subject: These changes amend Division 7, Forest Activities, Sub-division H, Machines Used in Forest Activities, rules OAR 437-007-0775 and 437-007-0780, which:

1. Extends the implementation date from July 1, 2009, to July 1, 2014 for excavator based machine protective structures required by OAR 437-007-0780.

2. Adopts a new rule, OAR 437-007-0775(15) exempting construction machines from the protective structure requirement if they perform only road construction activities.

Please visit OR-OSHA's website at www.orsosha.org.

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-007-0775

Protective Structure For Operators, Machines Manufactured On Or After July 1, 2004

NOTE: The scope of coverage in the SAE and ISO standards referenced in OAR 437-007-0775(11) and (14) are not intended to exclude any machines included in the scope of this Division.

(1) Machines manufactured on or after July 1, 2004, that permit the operator to stand on the ground adjacent to the machine while operating the machine:

(a) Are not required to have a fully enclosed cab.

(b) Must have overhead and landing chute side protection meeting the requirements of SAE J1084 April 80.

(2) Cabs and protective structures on forest activities machines manufactured on or after July 1, 2004, must have smooth, rounded edges and coverings free from projections which could puncture or tear flesh and clothing.

(3) Any machine operator cab, protective structure or attached guarding manufactured on or after July 1, 2004, that is damaged or weakened, to a strength less than that required by certified performance criteria must be replaced or immediately repaired.

(4) Repairs or modifications to major structural members of any operator cab, protective structure or attached guarding on machines manufactured on or after July 1, 2004, certified to performance criteria, must comply with the specific instructions of the original equipment manufacturer or be certified by a professional engineer.

(5) An operator restraint system must be provided and used on all machines manufactured on or after July 1, 2004, and equipped with ROPS,

FOPS, reinforced cabs or overhead guards. The operator restraint system must:

(a) Comply with SAE J386 NOV97 or ISO 6683 Amended 1:1990.

(b) Be maintained in an effective condition.

EXCEPTION: Use of the operator restraint system is not required when operating yarders that are stationary.

(6) The level of protection provided by any machine operator cab, protective structure or attached guarding manufactured on or after July 1, 2004, must be identified by a label. The label must:

(a) Comply with the labeling requirements of ISO 3471:1994 or ISO 12117:1997 as applicable.

(b) Not claim that exclusion from a standard is equivalent to compliance with that standard.

NOTE: Machines capable of 360-degree upper structure rotation are excluded from the SAE J1040 MAY94 and ISO 8082:1994 standards for ROPS. In this case, the exclusion from these standards does not allow the label on a machine capable of 360-degree upper structure rotation to state compliance with SAE J1040 MAY94 or ISO 8082:1994.

(7) Each machine used in forest activities that is manufactured on or after July 1, 2004, must have a fully enclosed cab for the operator which prevents objects from entering the cab. The fully enclosed cab must have:

(a) The upper portion enclosed with materials that allow for maximum visibility and meets the Operator Protective Structure (OPS) requirements of SAE J1084 APR80 or ISO 8084:1993.

(b) Transparent material must not have defects, such as, but not limited to, scratches, cracks, or broken safety glass which could create a hazard for the operator.

(c) The lower portion enclosed with solid material meeting the requirements of SAE J1084: APR80 or ISO 8084:1993.

(d) The overhead covering enclosed with solid material meeting the FOPS requirements of ISO 8083:1989 (11,600 Joules).

EXCEPTION 1: 437-007-0775(7)(a) is not required for the front window in machines operating in sort yards, on landings and similar prepared surfaces which are equipped with front guards meeting the SAE J1356 FEB88 requirements.

EXCEPTION 2: 437-007-0775(7)(a) and (7)(c) are not required on machines operating in mill yards.

(8) The machine operator space in cabs and protective structures manufactured on or after July 1, 2004, must comply with ISO 3411:1995.

(9) Access to machine operator cabs and protective structures manufactured on or after July 1, 2004, must comply with SAE J185-1988 or ISO 2867:1994.

(10) Each fully enclosed cab installed on machines manufactured on or after July 1, 2004, must have a second means of egress which can be opened from both the inside and outside without tools.

(11) Machines capable of handling material in front of or above the deflection limiting volume (DLV), as defined by SAE J397 APR98, including yarders with cabs mounted next to the tower (boom), manufactured on or after July 1, 2004, must have a front and top guard meeting the requirements of SAE J1356:FEB88.

EXCEPTION: The rule does not apply to rubber-tired or tracked front-end loaders when equipped with buckets or forks with hold down grapple arm(s).

(12) Machines used for forest activities and those identified by SAE J1116 MAR99 that are manufactured on or after July 1, 2004, must:

(a) Be equipped with ROPS which meet the criteria in SAE J1040-1994 or ISO 8082:1994.

(b) Comply with the requirements of OAR 437-007-0775(2) through (11).

EXCEPTION 1: This rule does not apply to high mast log stackers used exclusively to lift, transport or stack logs in sorting yards or transfer stations.

EXCEPTION 2: This rule does not apply to machines capable of 360-degree upper structure rotation that are excluded from SAE J1040:May 94 and ISO 8082:1994 standards for ROPS.

(13) Shear or deflector guarding must be:

(a) Installed in front of each cab to deflect whipping saplings and branches.

(b) Located so they do not impede visibility and access to the cab.

EXCEPTION: This rule does not apply to rubber-tired loaders, scrapers and graders.

(14) Machines used for forest activities manufactured on or after July 1, 2004, that are excluded from the ROPS, SAE J1040:1994 or ISO 8082:1994 requirements because they are capable of 360 degree upper structure rotation must be equipped with fully enclosed cabs that meet the requirements of 437-007-0775(2) through (11). These machines must be limited to use on surfaces that are prepared, excavated or constructed of solid material with a slope of less than 20 percent unless the operator's cab is equipped with the following additional protection:

(a) A Tip Over Protective Structure (TOPS) that meets the requirements of ISO 12117 1997:(E) with the exception of the "Formulae for the determination of energy required" In section 6.1.4 Table 1. The "Formulae for the determination of energy required" In Table 1 is changed as follows:

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(A) The lateral energy equation is replaced with $7300(M/10,000)0.9$ or 20,000 Joules, whichever is greater where M is the machine mass in kilograms.

(B) The longitudinal energy equation is replaced with $4300(M/10,000)0.9$ or 12,000 Joules, whichever is greater where M is the machine mass in kilograms.

(b) An "Off-Boom Side Cab Guard" that complies with the "Front Guard" requirements of SAE J1356: FEB88.

(c) An "Off-Boom Side Cab Guard" that complies with 437-007-0775(14)(b) when the following modifications are made to SAE J1356:FEB88:

(A) Section 3.2. Each occurrence of the term "Front Guard" in this section is replaced with "Off Boom Side Cab Guard."

(B) Section 3.2.4.1. The term "front of the DLV" on line 3 is replaced with "off boom side of the DLV".

(C) Section 5.2. Each occurrence of the term "Front Guard" in this section is replaced with "Off Boom Side Cab Guard".

(D) Section 5.2.3. The term "front of the DLV" on line 2 is replaced with "off boom side of the DLV".

(E) Section 6.2. The term "Front Guard" on line 1 is replaced with "Off Boom Side Cab Guard".

(15) Machines used for road construction activities on prepared surfaces with a slope of less than 20 percent are not required to have front and/or top cab protective structures when the machine's activities do not expose operators to the hazards of yarding, loading or timber falling.

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

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 2-2008, f. & cert. ef. 3-5-08

437-007-0780

Protective Structures for Operators, Machines Used On Or After July 1, 2014

Each machine used in forest activities on or after July 1, 2014, that is excluded from the ROPS, SAE J1040 MAY94 or ISO 8084:1994 requirements, because it is capable of 360 degree upper structure rotation, must:

(1) Meet the same requirements as those machines manufactured on or after July 1, 2004, or

(2) Be limited to use on surfaces that are prepared, excavated or constructed of solid materials with a slope of less than 20 percent when handling logs or other materials, or

(3) Have a clear path of travel and be limited to slopes of 40 percent or less when used only as anchors for cable yarding systems.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 2-2008, f. & cert. ef. 3-5-08

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Rule Caption: Adopt changes to Division 7, Forest Activities/Climbing and Worker Protection Standard.

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Rules Adopted: 437-007-1500, 437-007-1505, 437-007-1510, 437-007-1520, 437-007-1525, 437-007-1530, 437-007-1535

Rules Amended: 437-007-0010, 437-007-0025

Rules Repealed: 437-007-0685

Subject: These changes repeal OAR 437-007-0685, Climbing Equipment and Climbing and replace it with a series of new rules and notes contained in Division 7, Forest Activities, Subdivision P which:

1. Make rules clear and concise for users;
2. Update rules to include current technology;
3. Eliminate outdated/obsolete rules;
4. Provide uniformity between Forest Activities rules and other rules; and
5. Provide for the development of a climber rescue plan.

OAR 437-007-0025, Definitions, is amended to included definitions associated with Subdivision P, Tree Climbing.

The Worker Protection Standard (WPS) rule, OAR 437-007-0010, is amended to clarify that the WPS in its entirety is a part of Division 7.

Please visit OR-OSHA's website at www.orosha.org.

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-007-0010

Worker Protection Standard

Oregon OSHA administers and enforces the Worker Protection Standard (40 CFR 170). It is part of this division. All parts apply in addition to, and not instead of, any other part of division 7, Forest Activities. Should any of the parts of these two standards conflict, comply with the part offering the most protection to workers.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 5-2003, f. 6-2-03, cert. ef. 12-1-03; OSHA 3-2008, f. 3-7-08, cert. ef. 7-1-08

437-007-0025

Definitions

The following definitions apply to terms used in this Division:

(1) A-frame — A structure made of two independent columns fastened together at the top and separated by a reasonable width at the bottom to stabilize the unit from tipping sideways.

(2) Alternative communication system — A system by voice, hand or media other than horn or whistle which provides a safe and reliable method of communication between crew members.

(3) Anchor Point (tree climbing) — A secure point capable of providing life support.

(4) Approved container — A metal or polyethylene (plastic) container that can be used to carry flammable liquids in quantities up to 5 gallons. These containers must be accepted as satisfactory to contain flammable liquids by a nationally recognized testing lab, such as Underwriters Lab (UL) or Factory Mutual (FM).

(5) Aramid — The generic name for a high-strength, flame-resistant synthetic fabric used in the shirts and jeans of firefighters. Nomex, a brand name for aramid fabric, is the term commonly used by firefighters.

(6) Arch — Any device attached to the back of a mobile vehicle and used for raising one end of logs to facilitate movement.

(7) Ascenders (Jumars, Gibbs) — Any climbing device used to ascend a fixed vertical rope. The term ascenders usually refers to mechanical devices.

(8) Authorized person — See "Designated Person."

(9) Ballcut (falling cut) — The cut opposite of the face cut.

(10) Ballistic nylon — A nylon fabric of high tensile properties designed to provide protection from lacerations.

(11) Base of tree — That portion of a tree that is not more than 12 inches above highest ground level.

(12) Belay (snubbing) — A method of protecting a climber in case of fall. A safety rope tied to a climber is paid out or taken in as the climber moves by a second person (the belayer) or by the climber in a self-belay (using the 4-inch tie-in). By controlling the safety rope, the belayer can stop the climber from falling.

(13) Below The Four-Inch Bole Diameter — Any point on the bole of the tree where the diameter is greater than 4 inches.

(14) Bight of the line — A hazardous zone created by one or more lines under tension, or a point on a line where a rigging chain is attached.

(15) Binder — A hinged lever assembly for connecting the ends of a wrapper to tighten the load restraining devices (log trucks, flatbeds, low-boys, etc.).

(16) Brow log — A log placed parallel to any roadway at a landing or dump to protect carriers while loading or unloading.

(17) Buck — To cut a fallen tree into logs.

(18) Butt — The bottom cut or the first log of a fallen tree.

(19) Cable yarding — The movement of trees or logs from the area where they have been fallen to a landing by attaching them to a cable system that is supported by a metal tower (wood spar) and/or intermediate support or tail trees.

(20) Carabiner (Biners, Locking Carabiners) — An oblong metal ring with a spring loaded gate on one side used for various purposes in climbing, such as attaching equipment to the climber or securing the climber to a rappel system.

(21) Chest Harness — Straps placed around the chest and shoulders only to secure the proper positioning for a chest attachment point.

(22) Chock — A block, often wedge-shaped, which is used to prevent movement; for example, a log from rolling, a wheel from turning.

(23) Choker — Length of wire rope, chain or synthetic material with attachments for encircling a log to be yarded.

(24) Climber — A person qualified to climb a tree; the person climbing.

(25) Climbers Belt (Lineman's Belt, Body Belt, Safety Belt) — A wide padded belt having two large metal D-ring attachment points on the

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sides. A climbing belt does not have an attached chest harness or attached leg straps.

(26) Climbing Harness — A type of harness that provides both pelvic and upper body support and can be adjusted to fit individual climbers. Climbing harnesses may be a one-piece design (full body harness) or any two-piece design that meets industry recognized standards. Climbing harnesses normally have separate leg loops. Tree climbing harnesses will usually have all of the above plus two large D-ring attachment points on the sides.

(27) Climbing Helmet — Designed specifically for climbing, this helmet has a three-point chinstrap and is designed to remain in place during a fall. It is rated for the helmet's ability to protect against side and top impacts.

(28) Climbing Line — A 5400 pound minimum breaking strength rope used in tree climbing for ascending into a tree, descending from a tree, and/or working aloft in a tree.

(29) Climbing Spurs (Climbers, Tree Climbers, Gaffs, Pole Gaffs, Spurs, Tree Spurs, Lineman's Climbers, Spikes) — L-shaped metal shanks that attach to the foot and lower leg and are used to ascend or descend a tree bole by means of a sharp spike (gaff) that penetrates the tree bark and sticks into the wood of the tree.

(30) Competent person — A qualified person who has been authorized by the employer or employer representative to:

(a) Identify existing and predictable hazards in the surroundings or working conditions which are hazardous or dangerous to employees; and
(b) Eliminate the hazard or take corrective action.

(31) Confine a fire — To restrict the fire within determined boundaries established either prior to the fire or during the fire.

(32) Contain a fire — To take suppression action, as needed, which can reasonably be expected to check the fire's spread under prevailing conditions.

(33) Control a fire — To complete control line around a fire, and spot fires therefrom and any interior islands to be saved; burn out any unburned area adjacent to the fire side of the control lines; and cool down all hot-spots that are immediate threats to the control line, until the lines can reasonably be expected to hold under foreseeable conditions.

(34) Cut-up-tree/snag — A tree/snag, left standing, with the falling cuts started or completed.

(35) Cutter — One whose primary job is to manually fall, buck or limb trees.

(36) Danger tree — A standing tree, alive or dead, that presents a hazard to personnel due to deterioration or physical damage to the root system, trunk (stem), or limbs, and the degree and direction of lean.

(37) DBH — Diameter at breast height.

(38) Deadman — Buried log or other object used as an anchor.

(39) Deck — A stack of trees or logs.

(40) Descenders — Any rappelling device used to descend a vertical fixed rope.

(41) Designated person — An individual who has been assigned by the employer or the employer representative to perform a specific duty or duties.

(42) Direct supervision — Supervision by a competent person who watches over and directs the work of others who are within sight and unassisted natural voice contact.

NOTE: Direct supervision may be achieved by radio contact when an untrained runner is enroute to or from an operational area where there may be exposure to wildland fire hazards, provided there is a competent person at both the pick-up and drop-off points.

(43) Domino falling — The partial cutting of several trees which are left standing and then pushed over with a pusher (driver) tree. This definition of domino falling does not include the falling of:

(a) A single danger tree by falling another single tree into it.

(b) Two or more trees at the same time because their limbs are interlocked.

(44) Double tree intermediate support system — A system for supporting a loaded skyline in a support jack suspended on a single piece of wire rope that is supported by two trees in a manner that provides for sharing the load between the two trees. (See Figure 7-15.)

(45) Dutchman (as used in falling) — A method used to pull a tree against its lean by leaving a section of the undercut on one corner of the face.

(46) Dutchman (as used in yarding) — A block used to change direction of line lead (sideblocking).

(47) Dress a knot — To orient the rope parts of a knot so they are properly aligned, straightened, or bundled. This is often necessary for proper operation of the knot or to reduce rope stress.

(48) Dynamic Rope — A rope that has an elongation of 40 to 60 percent at the breaking strength and typically a 2 to 8 percent elongation at a working load of 200 pounds.

(49) Emergency care — Care provided by a person who is first aid and CPR trained.

(50) Emergency medical service — Care provided by a medically trained person such as in a hospital, clinic, ambulance or rescue vehicle.

(51) Emergency scene — The site where the suppression or control of a fire or an emergency exists.

(52) Equipment — See "Vehicle and Machine."

(53) Equipment protection designations — The listing of specific guarding requirements for specific logging machines.

(54) Escape route — A planned and understood route firefighters take to move to a safety zone or other low-risk area.

(55) Experienced person — A person who has sufficient training, experience and skill in a given process to be knowledgeable of all aspects of that process.

(56) Extreme weather conditions — Includes, but not limited to:

(a) Strong winds (applies to timbered areas only) — Wind velocity that reaches sufficient force to blow limbs from standing trees, cause wind-falls, or prevent cutters from falling trees in the desired direction;

(b) Impaired vision — Conditions such as falling snow, sleet, mist, fog, rain, dust, or darkness which substantially impairs visibility to the extent that employees cannot clearly see signals, moving vehicles, equipment and lines, falling trees or other hazards;

(c) Hazardous snow or ice conditions — Snow or ice conditions which prevent escape from hazards such as falling trees, moving logs, vehicles, or similar hazards; or

(d) Lightning.

(57) Fairlead — Sheaves, rolls or a combination thereof arranged for receiving a line coming from any direction to minimize the line from burning and aid proper line spooling onto a drum.

(58) Fall — To cut down trees.

(59) Faller — A person who falls (cuts down) trees.

(60) Fire camp — A geographical site(s) equipped and staffed to provide sleeping, food, water and sanitary services to fire personnel.

(61) Fire fighting equipment — All portable and fixed fire suppression and control equipment.

(62) Fire season — That period during the year when the State Forester declares fire season in any part of the state, as required by ORS 477.505.

(63) Fire shelter — A personal protection item carried by firefighters which when deployed unfolds to form a pup-tent shelter of heat reflective materials.

(64) Firefighter — Any employee whose primary duty is fire suppression and control of fires on or around wildland areas.

(65) Flame resistance — The property of material, or combinations of component materials, to retard ignition and restrict the spread of flame.

(66) FOPS (Falling Object Protective Structure) — Structural members arranged in such a way to reasonably protect operators from falling objects such as trees, rocks, etc.

(67) Four-Inch Tie-In — A self-belay (snubbing) system usually consisting of a rope, webbing, and carabiners. It is used as a safety line to secure the climber to the tree below the 4-inch bole diameter and at 3-foot intervals along the bole when climbing above the 4-inch bole diameter.

(68) Frequent review or inspection — A review or inspection that is conducted at intervals which are necessary (conducted on daily to monthly intervals) to gain a desired assessment of conditions, practices, policies or procedures.

(69) Grounded (Cutting) — Placement of a tree on the ground.

(70) Grounded (Electrical) — A method to dissipate static or electrical charges.

(71) Grounded (Machines) — The placement of a machine component on the ground or device where it is firmly supported.

(72) Guarded — Covered, shielded, fenced, enclosed, or otherwise protected by means of suitable enclosures, covers, casings, shields, troughs, railings, screens, mats, or platforms, or by location to prevent injury.

(73) Guyline — A standing line used to support or stabilize a spar, tail tree, intermediate support tree, machinery or equipment.

(74) Health care provider — A health care practitioner operating within the scope of their license, certificate, registration, or legally authorized practice.

(75) High lead — A system of logging where the mainline is threaded through the mainline block which is located near the top of the spar or

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metal tower to obtain a lift of the logs being yarded and is returned to the vicinity of the logs by a haulback line.

(76) High visibility colors — Bright or fluorescent white, lime green, orange, yellow, red, or aqua colors that stand out from the surrounding background color so as to make them easily seen.

(77) In the clear — A position within the work area where the probability of hazardous contact with vehicles, machines, falling trees, moving logs, rootwads, chunks, material, rigging, and equipment is minimized by distance from the hazards and/or use of physical barriers, such as stumps, trees, terrain, or other objects providing protection.

(78) Initial attack — The control efforts taken by all resources which arrive at the fire during the first burning period (first 24 hours).

(79) Kicker (as used in cutting) — A piece of the face, or an equivalent object, placed in one side of a face cut to pull the tree from its lean as it falls.

(80) Landing — Any designated place where logs are laid after being yarded and are awaiting subsequent handling, loading and hauling.

(81) Landing chute — The head of the skid trail or yarding road where the logs are temporarily placed and are awaiting subsequent handling, loading, and hauling.

(82) Lanyard (Climbing rope, Safety Lanyard, Adjustable Lanyard, Prusik Lanyard, Flip Line) — A short piece of 5400 pound minimum breaking strength rope or webbing that secures the climber to the tree.

(83) Lay (cutting) — The desired direction of fall for a tree.

(84) Lay (wire rope) — A unit of measure to describe the straight-line distance in which a strand of wire rope makes one complete spiral around the core of a rope. The way wires have been laid to form strands and the way strands have been laid around the core (i.e., regular, lang lay, etc.).

(85) Life support line (rope) — Any 5400 pound minimum breaking strength line, such as but not limited to, a climbing rope, flip strap or lanyard used to support or secure a climber in a tree.

(86) Limbing — To cut branches off trees.

(87) Lodged tree (hung tree) — A tree leaning against another tree or object which prevents it from falling to the ground.

(88) Log — A segment sawed or split from a fallen tree, such as, but not limited to, a section, bolt, or tree length.

(89) Log dump — An area in which logs are removed from a truck or rail car. May be either dry land or water, parbuckled over a brow log or removed by machine.

(90) Logging — All operations relating to the falling of trees, cutting the fallen trees into suitable lengths, yarding, limbing, debarking, grading, loading, hauling, unloading, storing in decks or ponds until processed from timber to wood products.

(91) Machine — Equipment used or intended for use in forest activities operations such as but not limited to building or maintaining roads; felling trees; processing trees or fiber; yarding, moving or handling logs, trees, chunks and other material; stream restoration; forest operations for wildlife enhancement or other management objectives; and wildland fire suppression.

(92) Mainline (yarding) — The line that moves the turn of logs toward the yarder in any given system.

(93) Mechanized falling — Falling of standing timber by a self-propelled mobile-wheeled or tracked machine equipped with a shear or other powered cutting device.

(94) Metal tower — A vertical or leaning metal tube or boom used for yarding logs by various methods of cable logging.

(95) NRTL (Nationally Recognized Testing Laboratory) — An organization which is recognized by OSHA in accordance with OAR 437, Division 2/A, §1910.7, Appendix A, OSHA Recognition Process for Nationally Recognized Testing Laboratories.

(96) OPS (Operator Protective Structure) — Structures or enclosures whose primary purpose is to minimize the possibility of operator injury from hazards, such as whipping saplings, branches, jill-poking and snapping winch lines with the least adverse effect on operator visibility, comfort, and protection from other hazards. Specific standards and tests exist and are referenced in many national and state codes.

(97) Pass line — A small line threaded through a block at or near the top of a wood tree or metal tower to assist the high climber.

(98) Periodic review or inspection — A review or inspection that is conducted at predetermined intervals (conducted on 1 to 12 months intervals).

(99) Personal protective equipment — Clothing or equipment worn to protect the head, body, feet and extremities from chemical or physical hazards.

(100) Potential failure zone — An area that could be impacted by the failure of any part of a standing tree anchor, tail or intermediate support tree as the result of forces or loads imposed on the tree by guylines, running lines or skylines. The boundaries of the zone encompass the area into which the tree, or parts of the tree, could fall, slide or roll and all trees, logs, lines and material impacted by the tree failure.

(101) Prescribed Fire — Any fire burning under predetermined conditions to meet specific objectives related to fuels reduction or habitat improvement.

(102) Qualified first aid person — Has evidence to show valid first aid and CPR training within the last 2 years.

(103) Qualified person — A person who has:

(a) A recognized degree, certification, professional standing, knowledge, training or experience.

(b) Successfully demonstrated the ability to perform the work, solve or resolve problems relating to the work, subject matter, or project.

(104) Qualified Tree Climber — An individual having the physical capabilities, training, work experience and job assignment authorized by the employer to climb tree.

(105) Rated capacity — The load identified by the manufacturer that a system, vehicle, machine or piece of equipment can lift or move.

(106) Rappel Rope (Main Line, Prusik Rope, Descent Rope) — A 5400 pound minimum breaking strength rope used to rappel or descend from a tree.

(107) Reach — Usually a rectangular steel tube which slides in the trailer tunnel and is used as a connection between a log truck and the trailer.

(108) Reforestation — All forest management operations relating to the planting and nurturing of trees. The nurturing of trees includes: fertilization, pre-commercial thinning, mulching, pruning, animal control measures, application of chemicals, and stand inventories.

(109) ROPS (Roll-Over Protective Structure) — Framing and support for machinery that reduces the possibility of a seat belted operator from being crushed should the machine roll over. Specific standards and tests exist and are referenced in many national and state codes.

(110) Root wad — The root ball and dirt that is pulled from the ground when a tree or stump is uprooted.

(111) Rub rails — Guarding on the exposed sides of elevated bridges, ramps or runways to prevent wheeled equipment from going over the edge.

(112) Rub tree — A tree used to guide a turn around a certain area.

(113) Runner — A person who delivers supplies, materials or relays information.

(114) Running line — Any moving line in a cable yarding system.

(115) Saddle (Sit Harness) — A type of work harness specifically designed to support the climber for long periods in a sitting position. A saddle differs from a safety harness by not having a chest component and may have either two separate leg loops or a single wide strap that encircles the climber below the buttocks.

(116) Safety factor — The ratio of breaking strength to safe working strength or load.

(117) Safety Line (Safety Rope, Belay Rope) — A 5400 pound minimum breaking strength rope that is either attached to a climber and used for belaying by a ground person or is attached to an anchor point and adjusted by the climber (such as with the 4-inch tie-in).

(118) Safety pin (shackle) — A threaded shackle pin secured by a nut that is secured with a cotter key, latchpin or molly.

(119) Safety Strap (Sling) — A length of rope or webbing used as a protection point in a belayed ascent by either the ground person or the climber in a self-belay (as in the 4-inch tie-in). These straps are placed around the tree bole and secured by either a knot or carabiner, then secured to the belay rope with a carabiner.

(120) Safety swede — A device that is designed for the specific purpose of making a positive connection to binders that are being closed (tightened) or opened.

(121) Safety Zone (fire) — A designated area of sufficient size and suitable location that is expected to protect fire personnel from known hazards without using fire shelters, such as but not limited to an already burned area, previously constructed safety area, a meadow that won't burn, man-made or natural rocky area that is large enough and sufficiently devoid of fuels to take refuge without being burned.

(122) Secured — When the climber is safeguarded from unintended movement utilizing a climbing system that is attached to the climber and connected to the tree. Examples of being secured include, but are not limited to: (1) when tied in (2) when using a lanyard (3) when on belay (4)

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when ascending a climbing line using the footlock technique while utilizing a Prusik loop or ascenders.

(123) Serviceable condition — That quality of a tool, machine, vehicle, equipment, or other device to operate as it was intended to operate by the manufacturer.

(124) Short log (chunks) — Any log or fiber less than 27 feet long.

(125) Single jack — One cutter, in an area or portion of standing timber, who falls and bucks.

(126) Single tree intermediate support system — A system for supporting a loaded skyline in a support jack suspended from a single tree. The tree may be an upright single-rooted tree or a leaning tree severed or partially severed from the stump.

(127) Siwash (intentional) — The use of a natural physical object, such as a tree or stump, that changes the direction of a line rather than with a block.

(128) Siwash (unintentional) — When a line is incorrectly routed through standing timber or other objects or, as often occurs in side-hill yarding, the turn of logs pulls the bight of the line downhill and it hangs up on a stump, root wad or other object, changing the lead and creating a hazardous area.

(129) Skidder — A self-propelled machine, of the wheel or crawler design, or an animal used to move logs or trees to a landing.

(130) Skidding — The movement of logs or fiber on the surface of the ground toward the place where they can be further processed or loaded.

(131) Skyline — The line which is hung between two or more supports on which a carriage or block travels.

(132) Slackline — A system of logging where a carriage travels on a skyline that can be raised or lowered. The carriage is pulled to the landing by the mainline (skidding line) and is returned to the vicinity of the logs by the haulback line or gravity.

(133) Slash burning — The use of prescribed fire as a method of forest management.

(134) Slope (grade) — The increase or decrease in altitude over a horizontal distance expressed as a percentage. For example, change of altitude of 20 feet (6 m) over a horizontal distance of 100 feet (30 m) is expressed as a 20 percent slope.

(135) Snag — Any standing dead tree or portion thereof.

(136) Snap Catch (Rope Snap, Snap Link, Snap Hook) — A metal device with a ring on one end that usually attaches permanently to a rope or cable. The other end has a spring-loaded, locking gate. As opposed to a carabiner, the gate on a snap link does not lock into the body of the snap link and does not offer any additional strength when closed.

(137) Snubbing — Retarding or controlling the movement of logs or machines by attachment to another vehicle or stationary object.

(138) Spring pole — A tree, segment of a tree, limb, or sapling which is under stress or tension due to the pressure or weight of another object.

(139) Square lead — A horizontal angle of up to 90 degrees formed by the projected lines of the mainline from the drum of the logging machine through the block or fairlead and the yarding road.

(140) Stability (machine or vehicle) — The capacity of a machine or vehicle to return to equilibrium or to its original position after having been displaced.

(141) Steel-Core Lanyard (Climbing rope, Flip Rope, Spur Rope, Cable-Core Lanyard) — A manila or synthetic rope with a steel cable core in which a snap hook or eye has been spliced at one end. This rope is used as a lanyard when spur climbing and when cutting, trimming, or pruning in a tree.

(142) Strip — A stand of timber or area of fallen and bucked timber in a predetermined location on which employees work in a planned pattern.

(143) Supervisory personnel — Agent of the employer (such as a manager, superintendent, foreperson, hooktender, rigging slinger, or person in charge of all or part of the place of employment) who directs the work activities of one or more employees.

(144) Swede connection — A line configuration consisting of wrapping two choker lines in the same direction around a tree or log and connecting the line nubbins to opposite line bells.

(145) Swing cut — A back cut in which the holding wood on one side is cut through.

(146) Swing radius (machines) — Is that distance equal to actual working radius of machines capable of upper structure rotation plus the length of the attachments, logs, and materials being handled.

(147) Tail hold — An anchor used for making fast any line or block other than a guyline.

(148) Tail tree — The tree at the opposite end from the landing area on which rigging is hung.

(149) Tight line — When a force is exerted on both main line and haulback at the same time.

(150) Timber cutting — The falling and/or bucking of trees by hand or mechanical means.

(151) Topping — Cutting off the top section of a standing tree prior to rigging the tree for a spar or tail tree.

(152) TOPS (Tip-Over Protective Structure) — Framing and support for machinery that reduces the possibility of a seat belted operator from being injured should the machine tip over on its side. Specific standards and tests exist and are referenced in many national and state codes.

(153) Tractor — A self-propelled machine of wheel or crawler design used to exert a push or pull force through mounted equipment to move objects or material.

(154) Tree Bole (Bole, Tree Stem, Tree Trunk) — The main vertical part of a tree.

(155) Tree Climber Trainee — An individual who is receiving training and on-the-job instruction from a qualified tree climber.

(156) Tree Climbing Work — Any task performed in or on a tree where access is accomplished by means of unsecured climbing, friction knots or mechanical ascenders, bole gripping systems, permanently or temporarily mounted steps, stacked sectional ladders, vehicle or machine hoisting, or climbing spurs.

(157) Tree jack (shoe) (other than for directional falling use) — A grooved saddle of wood, soft metal or rollers contained within two steel side plates attached to a tree with a strap as a guide for a skyline, sail guy or similar static line.

(158) Tree plates — Steel bars sometimes shaped as elongated “J”s which are fastened to a tree to hold the guylines and prevent the rigging from cutting into the tree when tightened. The hook of the “J” is also used to prevent the mainline block strap from sliding.

(159) Turn — Any log or group of logs or other material usually attached by chokers, grapples or other means and moved from a point of rest to the landing or landing chute area.

(160) Undercut (face) — A notch cut in a tree to guide the direction of the tree fall and help prevent splitting or kickback.

(161) V-lead — A horizontal angle of less than 90 degrees formed by the projected lines of the mainline from the drum of the logging machine through the block or fairlead and the yarding road.

(162) Vehicle — A car, bus, truck, trailer or semi-trailer owned, leased or rented by the employer that is used for transportation of employees or movement of material. Any carrier that is not manually propelled.

(163) Watcher/Firewatch — A person who visually observes the area on which operation activity occurred for the out-break of fire.

(164) Wildland Fire — Any non-structure fire, other than prescribed fire, that occurs in the wildland.

(165) Wildlands fire fighting — All activities, operations, and equipment of employers and employees involved in the suppression or control of fires on wildlands. Does not include interior structural fire suppression or control.

(166) Wildlife tree — A live, partially dead, or snag tree in the forest riparian zone, or in a cutting unit that is left for wildlife habitat. May also be a danger tree.

(167) Winching — The winding of cable or rope onto a spool or drum.

(168) Within the stakes — When the log center is below the top of the stakes.

(169) Work area — Any area frequented by employees in the performance of assigned or related duties.

(170) Wrapper (tie down) — A chain, cable, steel banding, synthetic rope or fiber webbing assembly used to contain a load of logs.

(171) Yarder — A machine with a series of drums used to yard logs.

(172) Yarding — Movement of logs or trees from the place they were felled to an area where they can be further processed.

[ED. NOTE: Figures and Appendices referenced are available from the agency.]

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

Stats. Implemented: ORS 654.001 - 654.295

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437-007-1500

Tree Climbing General Requirements

(1) The employer must develop rescue procedures that include:

(a) Adequate personnel and equipment to perform the rescue.

(b) Training in procedures to rescue a climber from a tree.

(2) When rescuing a climber, use procedures or equipment that will:

(a) Provide support to the climber's upper body (chest) and pelvis,

(b) Maintain the injured climber in an up-right position during rescue.

NOTE: Rescues may be accomplished using standard, familiar equip-

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ment, not special gear designed solely for rescue, as long as it supports the body as stated above.

(3) When the injured climber is wearing only a climbing belt, before rescue starts, provisions must be made to prevent the climber from slipping through the climbing belt.

NOTE: A climbing saddle or sit harness is designed to prevent slipping.
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 3-2008, f. 3-7-08, cert. ef. 7-1-08

437-007-1505

Climbing Equipment General Requirements

- (1) Before leaving the ground, the climber must:
 - (a) Visually check their climbing equipment,
 - (b) Immediately remove defective or damaged climbing equipment from service.
 - (c) Check hardware for secure closure before placing their weight on the lanyard or life support rope.
 - (d) Tie, dress and set all climbing knots.
- (2) Splices must be made according to cordage manufacturer's recommendations.
- (3) Life support ropes (climbing line) that are in service must:
 - (a) Be easily identifiable.
 - (b) Have a minimum breaking strength of 5,400 pounds.
 - (c) Be used only for climbing.
 - (d) Remove life support rope from climbing service when:
 - (a) It has been subjected to a shock load.
 - (b) There is excessive wear or damage detected during inspection.
 - (c) Webbing used for life support must be applied in a manner that provides a minimum breaking strength of 5,400 pounds.
 - (d) Climbing hardware must have a minimum breaking strength of 5,000 pounds.
 - (e) Lanyard snap hooks must be self closing and self locking.
 - (f) When a cutting tool is used in a tree, the climbing rope (lanyard) must be a high-quality steel safety chain of 3/16-inch size or larger or a wire core rope.

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 3-2008, f. 3-7-08, cert. ef. 7-1-08

437-007-1510

Climbing Procedures General Requirements

- (1) Before climbing a tree, assess the tree and immediate area for any potential hazards that could affect the climbing activity.
- (2) When stopping to rest or work, the climber must be secured to the tree.
- (3) When using a knot to adjust the length of a cable core lanyard, use a "cats paw" (Becket Hitch), friction hitch or mechanical friction device attached to a compatible size eye splice or D-ring of a climbing belt, saddle or harness.
- (4) Don't use climbing belts by themselves for rappels, ascender use, or friction hitch climbing.
- (5) While climbing operations are active, personnel on the ground must be positioned where they will not be struck by falling objects.
- (6) When it is necessary for ground personnel to work directly below the climber, the climber must not be engaged in any activity where tools, rigging or other objects could be dropped or dislodged from the tree.
- (7) The climber must give warning when any equipment or material is in danger of dropping, or is to be dropped deliberately.

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 3-2008, f. 3-7-08, cert. ef. 7-1-08

437-007-1520

Four Inch Tie-In Systems

- (1) Use a belay (snubbing) system, with dynamic rope, when climbing above the 4-inch bole diameter in conifers or above the last secure tie-in point capable of providing life support in hardwoods.
- (2) Install 4-inch tie-in system protection (rigging points) at least every 3 feet along the bole or branch to limit falls to no more than 6 feet.
- (3) Climbers must not:
 - (a) Place side loads on the carabiner gate.
 - (b) Use static cordage for applications where dynamic loading could occur.

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 3-2008, f. 3-7-08, cert. ef. 7-1-08

437-007-1525

Belayed (Snubbing) Climbing System

- (1) The belay line must be a dynamic rope with a minimum 5400 pounds breaking strength.
- (2) Do not use a body belay.
- (3) Do not use a chest harness as the tie-in point.
- (4) Follow the requirements of **Appendix 7-K**.
[ED. NOTE: Appendix referenced are available from the agency.]
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 3-2008, f. 3-7-08, cert. ef. 7-1-08

437-007-1530

Three Point Climbing System

- (1) Use a three-point climbing system (three-points of contact) when tree climbing.
NOTE: A three-point system is not required when using an approved rapel or ascender system.
- (2) While tree climbing, three-points of contact must be firmly in place on a secure surface before moving to another point.
NOTE 1: Each hand and foot (or climbing spur) is considered a potential point of contact.
NOTE 2: Other parts of the body, such as a hooked knee or armpit, may be considered contact points if the body part is physically capable of supporting the full body weight.
NOTE 3: A lanyard around the tree bole or appropriate limb that is secured to the safety harness or climbing belt on both ends counts as two points of contact.
- (3) Do not use unsound branches or stubs for support.
- (4) Climbing without being secured to the tree is not allowed except in conifers when, in the judgment of the qualified climber, the density of branches growing from the stem would require so many limb-overs, attaching and reattaching the lanyard, as to become a greater hazard than simply climbing that section of the tree.
- (5) Climbing in conifers without being secured is not allowed above the 4-inch bole diameter.
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 3-2008, f. 3-7-08, cert. ef. 7-1-08

437-007-1535

Storage and Transportation of Climbing Equipment General Requirements

- Do not store or transport climbing equipment:
- (1) Near extreme heat sources.
 - (2) In contact with gas, oil, chemicals, chemical vapors, battery and other acids.
 - (3) In contact with sharp or pointed objects and other items that can damage the climbing gear.
- Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 3-2008, f. 3-7-08, cert. ef. 7-1-08

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Department of Corrections
Chapter 291

Rule Caption: Contracts and Governmental Agreements with the Department of Corrections.

Adm. Order No.: DOC 3-2008(Temp)

Filed with Sec. of State: 3-4-2008

Certified to be Effective: 3-4-08 thru 8-29-08

Notice Publication Date:

Rules Adopted: 291-026-0050, 291-026-0140

Rules Amended: 291-026-0005, 291-026-0010, 291-026-0015, 291-026-0025, 291-026-0105, 291-026-0115, 291-026-0125

Rules Suspended: 291-026-0030, 291-026-0085, 291-026-0095

Subject: This temporary rulemaking is necessary to align the Department's rules with the rules and policies of the Department of Administrative Services and the Department of Justice, and to reflect organizational and operational changes that have occurred within the Department since the last revision.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-026-0005

Authority, Purpose and Policy

- (1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

ADMINISTRATIVE RULES

(2) Purpose: To assure that personal and professional service contracting is carried out in an efficient manner within requirements set by statutes, regulations, policies, and standards.

(3) Policy:

(a) It is the policy of the Department of Corrections (Department) that legislatively funded Department of Corrections programs may enter into personal or professional contracts for services so long as the required services could not have been performed cost effectively using qualified public resources.

(b) One or more of the following circumstances shall be present to justify entering into a personal/professional service contract:

(A) The specialized skills, knowledge, and resources are not available within the Department;

(B) The work cannot be done in a reasonable time with the Department's own work force;

(C) An independent and impartial evaluation of a situation is required;

(D) There is a grant which requires contracting; or

(E) It is less expensive to contract for the work.

Stat. Auth.: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Stats. Implemented: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Hist.: CD 9-1987(Temp), f. & ef. 1-22-87; CD 27-1987, f. & ef. 6-5-87; CD 26-1993, f. 10-14-93, cert. ef. 11-1-93; DOC 3-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

291-026-0010

Definitions

(1) Architectural, Engineering and Land Surveying Services, and Related Services: As defined in ORS 279C.100 and 279C.100(6) and collectively means a special class of personal services that are required to be performed by an architect, engineer or land surveyor and related services.

(2) Competitive Solicitation: A documented process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the contractor's fees or costs, availability, capacity, experience, references, responsiveness to time limitations, responsiveness to solicitation requirements, and quality of previous performance.

(3) Contract Administration: All functions related to a given contract between the Department and a contractor or consultant from the time the contract is executed until the work is completed and accepted or the contract is terminated, payment has been made, and disputes have been resolved. Contract administration includes amendments.

(4) Contracts Unit: The unit within the Department responsible for conducting the procurement process resulting in an executed contract or agreement.

(5) Contractor or Consultant: The person or entity with whom the Department enters into a contract.

(6) Emergency: Circumstances that:

(a) Could not have been reasonably foreseen;

(b) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and

(c) Require prompt execution of a contract to remedy the condition.

An emergency procurement means a sourcing method pursuant to ORS 279B.080, 279C.335(5) statutes.

(7) Interagency Agreement: An agreement between two or more state agencies.

(8) Intergovernmental Agreement: An agreement between the Department and a unit of local government, the federal government, or agencies of the federal government.

(9) Interstate Agreement: An agreement between a state agency and other public agencies outside the boundaries of the State of Oregon.

(10) International Agreement: An agreement between a state agency and any country outside the boundaries of the United States.

(11) Memo of Understanding: A non-binding agreement or documentation of gifts.

(12) Notice to Proceed: A document issued solely by the Contracts Unit directing the commencement of service. Services will not begin prior to issuance of the notice.

(13) Originating Program: The program or functional unit within the Department of Corrections which is seeking or soliciting the services of a contractor or other governmental entity.

(14) Personal Services: The services performed under a personal services contract in accordance with OAR 125-247 and related rules in OAR 125-246. "Personal services" includes architectural, engineering and land surveying services procured under ORS 279C.105 or 279C.110 and related services procured under ORS 279C.120.

(15) Sole-Source Procurement: A sourcing method by which the Department awards a contract without competition to a single source for

supplies and services, when written justification demonstrates no other source is available, in accordance with ORS 279B.075 and OAR 125-247-0275

(16) Solicitation Document: An invitation to bid, a request for proposals, a special procurement solicitation, or other document issued to invite offers from prospective contractors in accordance with ORS 279B or 279C. Solicitation document includes related documents, either attached or incorporated by reference, and any changes thereto, issued by the Department.

(17) Statement of Work: All provisions of a public contract that specifically describe the services or work to be performed or goods to be delivered by either the contractor, its subcontractor(s), or the Department, as applicable, including any related technical specifications, deadlines, or deliverables. Detailed description of the specific services or tasks a contractor or consultant is required to perform under a contract.

(18) Tribal Agreements: An agreement between the Department and any American Indian Tribe.

Stat. Auth.: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Stats. Implemented: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Hist.: CD 9-1987(Temp), f. & ef. 1-22-87; CD 27-1987, f. & ef. 6-5-87; CD 26-1993, f. 10-14-93, cert. ef. 11-1-93; DOC 3-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

291-026-0015

Contract Classification

This rule sets forth procedures for programs within the Department of Corrections to follow when entering into the following classification of contract or agreements:

(1) Personal service contracts;

(2) Professional service contracts for architectural, engineering, land surveying services, and related services;

(3) Interagency agreements;

(4) Intergovernmental agreements;

(5) International agreements;

(6) Interstate agreements;

(7) Tribal agreements; or

(8) Memos of understanding.

Stat. Auth.: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Stats. Implemented: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Hist.: CD 9-1987(Temp), f. & ef. 1-22-87; CD 27-1987, f. & ef. 6-5-87; CD 26-1993, f. 10-14-93, cert. ef. 11-1-93; DOC 3-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

291-026-0025

Department of Corrections and Other Required Approvals

(1) The Director may delegate signature authority on behalf of the Department of Corrections for contracts and agreements identified in OAR 291-0026-0015.

(2) Pursuant to OAR 137-045-0030, the Department of Justice must review and approve for legal sufficiency certain contracts and agreements and associated solicitation documents based upon dollar threshold and other considerations. The Contracts Unit will serve as liaison between the Department of Corrections and the Department of Justice for the legal review and approval of documents requiring such review.

(3) Unless exempted or delegated authority has been granted to the Department of Corrections, all contracts shall be approved by the Department of Administrative Services before any service may be performed under the contract.

(4) Approval to commence work:

(a) Work shall not commence until the issuance of a "Notice to Proceed" by the Contracts Unit.

(b) Payments shall not be made to contractors for work performed prior to the date of the "Notice of Proceed" or after the termination date of the contract.

Stat. Auth.: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Stats. Implemented: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Hist.: CD 9-1987(Temp), f. & ef. 1-22-87; CD 27-1987, f. & ef. 6-5-87; CD 26-1993, f. 10-14-93, cert. ef. 11-1-93; DOC 3-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

291-026-0030

Independent Contractor Status

(1) The status of the prospective contractor shall be verified through completion of an independent contractor certification form.

(2) Each contract shall include a standard independent contractor statement.

(3) Contracts shall not be approved for use when the service provider is other than a certified independent contractor or corporation.

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

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

Hist.: CD 9-1987(Temp), f. & ef. 1-22-87; CD 27-1987, f. & ef. 6-5-87; CD 26-1993, f. 10-14-93, cert. ef. 11-1-93; Suspended by DOC 3-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

ADMINISTRATIVE RULES

291-026-0050

Contract Administration — General Provisions

(1) Contract Administrator: The originating program will appoint, in writing, a contract administrator to represent the Department for each contract and agreement. The contract administrator may delegate in writing a portion of the contract administrator's responsibilities to a technical representative for specific day-to-day administrative activities for each contract.

(2) Contract Administration Duties:

(a) Contract Budget Management: The contract administrator will work with the Budget Office to ensure adequate and appropriate encumbrances are made to the in-house accounting system to manage the budget in relation to contracted expenditures. Although contracts may cross biennia, proper budget management is the responsibility of the contract administrator.

(b) The contract administrator will monitor progress of work and ensure contract deliverables are met in accordance with the schedule.

(c) The contract administrator will take steps to correct and remedy any problems which may interfere with completion of the work. This may include, but is not limited to, initiating amendments, exercising termination provisions, or any other provisions or actions required. The contract administrator will document in writing all such steps taken.

(d) Ramifications of failure to appropriately administer a contract could result in over expenditure of Department funds. Negligent or fraudulent expenditures can result in personal financial responsibility or disciplinary action, up to and including dismissal pursuant to the Department's policy on Delegation of Expenditure Authority (30.1.4).

Stat. Auth.: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075
Stats. Implemented: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075
Hist.: DOC 3-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

291-026-0085

Screening and Selection Process for Architects, Engineers, and Related Professional Consultants

The Department shall adopt the Department of Administrative Services administrative rules, OAR 125, division 65, for screening and selecting persons or firms to perform architectural, engineering, and related services.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075 & OAR 125-065
Hist.: CD 26-1993, f. 10-14-93, cert. ef. 11-1-93; Suspended by DOC 3-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

291-026-0095

Notification to the State's Advocate for Minority, Women, and Emerging Small Business

The originating program shall notify the state's advocate for minority, women, and emerging small business whenever a proposal is being sought for a personal/professional service contract with an anticipated value which meets or exceeds the amount established by ORS 200.035.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 200.035, 423.020, 423.030 & 423.075
Hist.: CD 26-1993, f. 10-14-93, cert. ef. 11-1-93; Suspended by DOC 3-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

291-026-0105

Request Forms

(1) The originating program will use the Department's approved request forms to initiate the applicable process.

(2) The "statement of work" will be written to clearly and concisely specify the contract outcome expectations, deliverables, schedule, and responsibilities of the Department and contractor.

Stat. Auth.: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075
Stats. Implemented: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075
Hist.: CD 26-1993, f. 10-14-93, cert. ef. 11-1-93; DOC 3-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

291-026-0115

Amendments

Amendments will be processed solely by the Contracts Unit when an active contract or agreement must be revised, clarified, altered, extended or changed. The contractor administrator will submit the Department's amendment form to the Contracts Unit to initiate the amendment process.

Stat. Auth.: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075
Stats. Implemented: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075
Hist.: CD 26-1993, f. 10-14-93, cert. ef. 11-1-93; DOC 3-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

291-026-0125

Interagency, Intergovernmental, International, Interstate or Tribal Agreements

(1) The Department will consider using agreements with other governmental entities to provide services before using private contractors.

(2) The agreement must be written or reviewed by the Contracts Unit prior to review and approval of the other party. The Contracts Unit will initiate the legal review and signature process as required under applicable rule.

(3) The written agreement shall include the following:

(a) The purpose of the agreement;

(b) The term of the agreement, including specific beginning and ending dates, if applicable;

(c) The total cost of the agreement to each party, including payment terms, if any; and

(d) The methods to terminate the agreement and any other pertinent information.

Stat. Auth.: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075
Stats. Implemented: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075
Hist.: CD 26-1993, f. 10-14-93, cert. ef. 11-1-93; DOC 3-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

291-026-0140

Memos of Understanding

(1) Memos of understanding are not legally binding on any party, but are commonly used to document agreements between parties for expectation of performance during emergencies or for mutual assistance.

(2) Funds cannot be obligated through a memo of understanding.

(3) The Contracts Unit is the holder of the file of record. The originating Department section will forward copies of all memos of understanding to Contracts Unit.

Stat. Auth.: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075
Stats. Implemented: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075
Hist.: DOC 3-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

Rule Caption: Purchasing.

Adm. Order No.: DOC 4-2008(Temp)

Filed with Sec. of State: 3-4-2008

Certified to be Effective: 3-4-08 thru 8-29-08

Notice Publication Date:

Rules Adopted: 291-164-0050

Rules Amended: 291-164-0005, 291-164-0010, 291-164-0015, 291-164-0020, 291-164-0025, 291-164-0030

Rules Suspended: 291-164-0045

Subject: This temporary rulemaking is necessary to update the Department's policy and processes for purchasing of supplies and services and to ensure they align with rules and policies of the Department of Administrative Services and Department of Justice. Other modifications are necessary to reflect organization and operational changes that have occurred since the last revision.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-164-0005

Authority, Purpose, and Policy

(1) Authority: The authority for the 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: To assure that supplies, equipment, and services are purchased in compliance with applicable statutes and regulations governing state agency purchasing practices.

(3) Policy: It is the policy of the Department of Corrections (Department) that advance planning is an inherent management responsibility which is essential to the maintenance of a cost-effective and efficient purchasing program. The Department's purchasing program will comply with the Department of Administrative Services rules governing the purchasing process (OAR Chapter 125, division 246 through 249) or Department of Justice Model Rules (OAR Chapter 137, division 045 through 047). The Department will determine the model rule in accordance with ORS 179.040 and 421.438 that best supports its mission.

Stat. Auth.: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075
Stat. Implemented: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075
Hist.: CD 22-1987, f. & ef. 4-3-87; CD 3-1991(Temp), f. & cert. ef. 1-17-91; CD 17-1991, f. & cert. ef. 7-11-91, DOC 4-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

ADMINISTRATIVE RULES

291-164-0010

Definitions

(1) Authorized Receiving Point: The site specified for receiving and inspecting all supplies, services, and equipment purchased by a functional unit.

(2) Emergency Purchase: Immediate acquisition of a service or supply item required to correct an emergent situation regardless of when the situation occurs. Emergent situations are those which could not have been reasonably anticipated that present a clear and imminent danger to life, health, safety, security or loss to public property. The functional unit manager or designee in his/her absence may authorize emergency purchases.

(3) Expedited Purchase: Expedited acquisition of a service or supply that is necessary to preclude or mitigate the development of an emergent situation. Critical situations are those which could not have been reasonably anticipated. The functional unit manager or designee in his/her absence may authorize expedited purchases through the Purchasing Unit.

(4) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, Deputy Director, an Assistant Director, or an administrator and has responsibility for the delivery of program services or coordination of program operations.

(5) Purchase Order: A legal document which contains essential elements of an offer to buy goods, supplies, or services issued by the Purchasing Unit.

(6) Request Order: Automated requests directed to the Purchasing Unit and approved by the appropriate authority which fully describe the item or service requiring issuance of a purchase order.

(7) Will Call Order: A purchase request which indicates that the requestor wishes to pick up the item(s) ordered.

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

Stat. Auth.: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Stats. Implemented: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Hist.: CD 22-1987, f. & ef. 4-3-87; CD 3-1991(Temp), f. & cert. ef. 1-17-91; CD 17-1991, f. & cert. ef. 7-11-91, DOC 4-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

291-164-0015

General

(1) Managers within each functional unit shall review inventory stock levels and usage rates available through the Department's computerized perpetual inventory system prior to submitting a purchase request to increase inventory levels of stock item(s).

(2) Requests for similar commodities must be consolidated to gain the economic advantage of volume purchasing.

(3) All goods, supplies, and services purchased by the Department will be received and inspected at authorized receiving points.

(4) Managers identifying a specific vendor or product by brand name shall be aware that products of approved equal specification and alternate vendors may be substituted as a result of competitive bidding.

(5) Expediting purchase orders shall be limited to items which are critical to the function of a program and need for the good, supply, or service could not have been reasonably anticipated. If the good, supply, or service is not purchased promptly, an emergent situation will develop resulting in imminent danger to life, health, safety, security, or loss to public property.

Stat. Auth.: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Stats. Implemented: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Hist.: CD 22-1987, f. & ef. 4-3-87; CD 3-1991(Temp), f. & cert. ef. 1-17-91; CD 17-1991, f. & cert. ef. 7-11-91, DOC 4-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

291-164-0020

Functional Unit Manager Responsibilities

The functional unit manager shall:

(1) Provide Fiscal Services with a current list and necessary updates of management service staff that have been delegated authority to approve request orders within specific programs.

(2) Identify supplies and services which require procurement. This authority may be delegated to the management service staff that have been delegated authority to initiate request orders.

(3) Assure at the time a request order is initiated that sufficient funds are available and authorized for expenditure within the current appropriation.

(4) Determine whether a critical situation exists which requires the Purchasing Unit to expedite an order and provide a written explanation to the Purchasing Manager why the purchase or service request could not have been reasonably anticipated.

(5) Utilize the Department's Automated Financial Account Management Information System (AFAMIS).

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

Stat. Auth.: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Stats. Implemented: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Hist.: CD 22-1987, f. & ef. 4-3-87; CD 3-1991(Temp), f. & cert. ef. 1-17-91; CD 17-1991, f. & cert. ef. 7-11-91, DOC 4-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

291-164-0025

Specific Steps to Complete Purchases

(1) The functional unit shall:

(a) Complete a request order utilizing the Department's AFAMIS system.

(b) When processing an expedited order, the request order will identify that the order is to be expedited by the Purchasing Unit and an explanation why.

(c) An electronically approved request order certifies:

(A) Funds are available and appropriate to expend;

(B) Full account number and cost center indicated is appropriate;

(C) Description of item is complete and accurate;

(D) Delivery address is correct;

(E) Delivery date requested is credible and reasonable; and

(F) Stated purpose for expenditure is accurate and supportable.

(2) The Purchasing Unit shall:

(a) Review the request order for accurate and credible information.

(A) Requisitioners may be contacted to verify, challenge, or obtain additional information as deemed necessary to complete the request.

(B) Requests that are questionable or challenge statutes, regulations, or policy will be reviewed by the Purchasing Manager or designee. Final disposition of such requisitions shall be at the discretion of the Purchasing Manager.

(b) Process request orders in compliance with OAR Chapter 137, division 045, 047, or ORS Chapter 279A, B, C and OAR Chapter 125, division 246 through 249.

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

Stat. Auth.: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Stats. Implemented: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Hist.: CD 22-1987, f. & ef. 4-3-87; CD 3-1991(Temp), f. & cert. ef. 1-17-91; CD 17-1991, f. & cert. ef. 7-11-91, DOC 4-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

291-164-0030

Emergency Purchases

Requirements:

(1) The functional unit manager shall ensure that the requirements specified in this rule as well as the requirement to document the emergency under ORS 279B.080 and OAR 125-247-0280 or 137-047-0280 are satisfied.

(2) The functional unit manager shall submit a request order utilizing AFAMIS. Such orders shall clearly indicate on the request that this is an emergency purchase followed with verbal communication to the functional unit manager to confirm the receipt of the requirement.

(3) The functional unit manager shall take the necessary action to acquire the services, goods, or supplies required to satisfy the requirements to mitigate the emergent situation.

(4) The functional unit manager will communicate (verbally) to the Purchasing Manager within ONE business day (or as soon as practicable) followed with a written communication (memo or e-mail) within THREE business days describing the extenuating circumstances of the emergency.

Stat. Auth.: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Stats. Implemented: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, & 423.075

Hist.: CD 22-1987, f. & ef. 4-3-87; CD 3-1991(Temp), f. & cert. ef. 1-17-91; CD 17-1991, f. & cert. ef. 7-11-91, DOC 4-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

291-164-0045

Limited Monthly Purchase Accounts

(1) Central Fiscal Services Purchasing Unit shall:

(a) Pursuant to OAR 125-310-0020, interview and select vendors to establish monthly accounts. Subsequent to June 30, 1991, monthly accounts will be established pursuant to OAR 125-310-0024;

(b) Issue purchase orders that specify the types of supplies and materials that are authorized directly to the vendors; and

(c) Provide participating functional unit managers with an updated list of vendors and current purchase order numbers.

(2) The functional unit manager or designee shall:

(a) Identify the need to purchase items on an authorized Limited Monthly Account;

(b) Complete the Limited Monthly Purchase Authorization (LMPA) form and obtain signature approval from the functional unit manager or designee;

(c) Place the order with the vendor.

(3) All goods, invoices, and LMPA forms must be delivered to the authorized receiving point for the functional unit.

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- (4) The authorized receiving point shall:
- (a) Inspect and verify that the quantity and description of the goods match the vendor invoice;
 - (b) Sign and date the invoice noting any discrepancies;
 - (c) Release the items to the functional unit representative after obtaining a signature verifying receipt of goods;
 - (d) Forward the invoice and LMPA to the Department of Corrections Central Accounting Unit within two working days.
- (5) The Central Fiscal Services Accounting Unit shall:
- (a) Process invoices by cost center (identified by the LMPA) and close the account at the end of the month;
 - (b) Deliver monthly invoices to the Central Fiscal Services Purchasing Unit for review of purchasing activity.
- (6) The Central Fiscal Services Purchasing Unit shall:
- (a) Review each invoice to ensure that activity complies with the guidelines and limitations of the account;
 - (b) Resolve any discrepancies and report any violations to the appropriate Assistant Director for corrective action;
 - (c) Issue the purchase order number for the following month for each limited monthly account unless the account is closed by request of the functional unit manager or due to violation of the guidelines in this rule.
- Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 3-1991(Temp), f. & cert. ef. 1-17-91; CD 17-1991, f. & cert. ef. 7-11-91; Suspended by DOC 4-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

291-164-0050

Alternative Small Purchase Procurements

- (1) The Department will make available to approved staff alternate methods to procure limited small procurement items.
- (a) These items must be procured following all Department and general procurement rules and policies.
- Stat. Auth.: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, and 423.075
Stats. Implemented: ORS 179.040, 279A.050(6)(h)&(i), 423.020, 423.030, and 423.075
Hist.: DOC 4-2008(Temp), f. & cert. ef. 3-4-08 thru 8-29-08

Department of Energy
Chapter 330

Rule Caption: State-Regulated Appliance Efficiency Standards.

Adm. Order No.: DOE 2-2008

Filed with Sec. of State: 2-28-2008

Certified to be Effective: 3-1-08

Notice Publication Date: 10-1-2007

Rules Adopted: 330-092-0005, 330-092-0010, 330-092-0015, 330-092-0020, 330-092-0025, 330-092-0030, 330-092-0035, 330-092-0040, 330-092-0045, 330-092-0050, 330-092-0055, 330-092-0060, 330-092-0065, 330-092-0070

Subject: The purpose of these rules is to establish procedures governing enforcement and amendment of minimum energy efficiency standards established ORS 469.229 to ORS 469-261 and ORS 469.040(1)(d), as amended by Or Laws 2007, Ch. 375 (HB 2565) and OR. Laws 2007, Ch. 469 (SB 375), for certain categories of equipment and appliances for sale or use in Oregon that are not federally regulated. The rules:

Define the terms used.

Summarize regulated equipment and effective dates.

Clarify where the minimum energy efficiency standards methods are located in Oregon statutes.

Require manufacturer reporting of equipment compliance through the Multi-State Compliance System (M-SCS) database located at www.appliancestandards.org.

Require products to be sold or used in Oregon to be listed in the M-SCS after the respective effective date for each category of equipment.

Establish requirements for manufacturer certification of products.

Establish procedures the Oregon Dept. of Energy will use to determine compliance.

Establish requirements for labeling of products.

Provide written appeals of department staff's action to the Director.

Establish procedure to postpone the operative date of the minimum energy efficiency standard for a category of equipment.

Establish procedures for the Oregon Dept. of Energy to update minimum energy efficiency standards or adopt standards for additional categories of equipment.

Provide that the Department will establish a mailing list of manufacturers and for each category of equipment.

Rules Coordinator: Michael Grainey—(503) 378-5489

330-092-0005

Purpose

(1) The purpose of these rules is to establish procedures to govern the enforcement and amendment of standards found in ORS 469.229 through 469.261, which establish minimum energy efficiency standards for equipment and appliances for sale or use in Oregon that are not federally regulated.

Stat. Auth.: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)

Stats. Implemented: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08

330-092-0010

Definitions

As used in OAR 330-092-0010 through 330-092-0046:

(1) "Director" means the Director of the Oregon Department of Energy.

(2) "Department" means the Oregon Department of Energy.

(3) "Equipment" means a category of equipment or appliances regulated by ORS 469.229 to ORS 469.261 and described in OAR 330-092-0015, below.

(4) "Multi-State Compliance System" or M-SCS means the multi-state database program located at www.appliancestandards.org to register and list compliant equipment.

(5) "Product" means a particular model number or series available from a particular manufacturer, as distinct from a category of equipment.

Stat. Auth.: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)

Stats. Implemented: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08

330-092-0015

Effective Dates for Equipment Regulated Pursuant to ORS 469.229

(1) The following list specifies the effective dates for equipment for which Oregon minimum energy efficiency standards have been adopted:

(a) Automatic commercial ice cube machines as defined in ORS 469.229(1): Effective date January 1, 2008 for sale of equipment and January 1, 2009 for installation. Federal standards are scheduled to become effective January 1, 2010.

(b) Bottle-type water dispensers, as defined in ORS 469.229 (3): Effective date September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(c) Commercial hot food holding cabinets, as defined in ORS 469.229(5): Effective date September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(d) Commercial refrigerators and freezers, as defined in ORS 469.229(7): Effective date January 1, 2008 for sale of equipment and January 1, 2009 for installation.

(e) Compact audio products, as defined in ORS 469.229(8): Effective date September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(f) Digital versatile disc players and digital versatile disc recorders, as defined in ORS 469.229(11): Effective date September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(g) Metal halide lamp fixtures, as defined by ORS 469.229(15): Effective date January 1, 2008 for sale of equipment and January 1, 2009 for installation.

(h) Portable electric spas, as defined in ORS 469.229(17): Effective date September 1, 2009 for sale of equipment in Oregon and September 1, 2010 for installation.

(i) Single-voltage external AC to DC power supplies, as defined in ORS 469.229(22): Effective date January 1, 2008 for sale of equipment and January 1, 2009 for installation. Federal regulations are scheduled to become effective in July 1, 2008.

(j) Unit heaters, as defined in ORS 469.229(26): Effective date January 1, 2008 for sale of equipment and January 1, 2009 for installation. Federal regulations are scheduled to become effective in August, 2008.

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(2) The following equipment described in ORS 469.229 through 469.233, is currently federally regulated and not subject to further regulation under ORS 469.229 or these rules:

- (a) Commercial clothes washers, as defined in ORS 469(4).
- (b) Commercial pre-rinse spray valves, as defined in ORS 469.229(6).
- (c) Illuminated exit signs, as defined in ORS 469.229(13).
- (d) Incandescent reflector lamps, as defined in ORS 469.229(23).
- (e) Torchieres, as defined in ORS 469.229(24).
- (f) Traffic signal modules, as defined in ORS 469.229(25).
- (g) Walk-in refrigerators and walk-in freezers, as defined in ORS 469.229(27).

Stat. Auth.: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)
Stats. Implemented: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08

330-092-0020

Minimum Energy Efficiency Standards and Test Methods

(1) Except as provided in ORS 469.299(2), a person may not sell or offer for sale a product described in OAR 330-092-0015 unless the energy efficiency of the product meets or exceeds the minimum energy efficiency standards specified in ORS 469.233.

Stat. Auth.: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)
Stats. Implemented: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08

330-092-0025

Reporting Product Compliance Through the Multi-State Compliance System

(1) Manufacturers of Oregon-regulated equipment except single voltage external AC to DC power supplies shall report compliance by registering a product on the Multi-State Compliance System website (www.appliancestandards.org) or by registering products with the California Energy Commission Appliances Database (<http://www.energy.ca.gov/appliances/appliance/>). Products registered on the CEC Appliances Database will be automatically entered on the M-SCS database.

(2) Manufacturers of Oregon-regulated single voltage external AC to DC power supplies shall report compliance in accordance with the provisions of OAR 330-092-0035(5).

(3) Questions concerning the M-SCS or the California Appliances Database should be directed to the Oregon Department of Energy's Appliance Efficiency Standards Program Manager, 503-378-4040, 625 Marion St. N.E., Salem OR 97301.

Stat. Auth.: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)
Stats. Implemented: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08

330-092-0030

Effect of Registration

(1) To be sold or used in Oregon after the effective dates described in OAR 330-092-0016, Oregon-regulated products except for single voltage external AC to DC power supplies must be listed as "Compliant" in the M-SCS database. Products that are not listed in the database or are listed as "Needing Attestation" or "Non-Compliant" may not be sold or used in Oregon after the applicable effective date.

Stat. Auth.: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)
Stats. Implemented: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08

330-092-0035

Manufacturer Certification of Information Entered in the Multi-State Compliance System

(1) Manufacturers of Oregon-regulated equipment except single voltage external AC to DC power supplies must certify to the Oregon Department of Energy with a letter signed by a responsible officer in the organization, such as the Chief Financial Officer, Government Relations Officer, Chief Engineer or Technical Officer, that:

(a) The information related to the products listed by the manufacturer in the Multi-State Compliance System is true and accurate; and

(b) The products have been tested in accordance with test methods specified in ORS 469.233 or in these rules, as appropriate.

(2) Manufacturers of Oregon-regulated single voltage external AC to DC power supplies must certify to the Oregon Department of Energy with a letter signed by a responsible officer in the organization, such as the Chief Financial Officer, Government Relations Officer, Chief Engineer or Technical Officer, that:

(a) Their products sold in Oregon comply with the minimum energy efficiency standards in ORS 469.233;

(b) The labeling of these products complies with the requirements in OAR 330-092-0045(6)(b); and

(c) The products have been tested in accordance with test methods specified in ORS 469.233 or in these rules, as appropriate.

(3) A single letter may certify compliance for multiple products, but the letter must list each product to which it applies separately. Additional certifications are required when new products are listed.

(4) The letter may be sent by mail, or by e-mail with electronic signature, to the Oregon Department of Energy's Appliance Efficiency Standards Program Manager, 503-378-4040, 625 Marion St. N.E., Salem OR 97301.

(5) The Department will update the database as needed to reflect that compliance letters have been received.

Stat. Auth.: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)
Stats. Implemented: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08

330-092-0040

Determination of Compliance

(1) Products for which the Oregon minimum energy efficiency standards are identical to or lower than standards adopted in California, and that have been approved by the California Energy Commission, will automatically be certified as compliant for sale and use in Oregon.

(2) Products for which Oregon minimum energy efficiency standards are not identical to standards adopted in California, or that have not been approved by the California Energy Commission, must be approved by the Oregon Department of Energy and will be designated under Oregon status in the Multi-State Compliance System as requiring manufacturer attestation until they are approved.

(3) Products which do not comply with the appliance efficiency standards set forth in ORS 469.233 will be designated as "Non-Compliant."

(4) A manufacturer may request the Department to change the status of a product from "Needing Attestation" or "Non-Compliant" to "Compliant" if they believe it is incorrectly listed. The Department may require the manufacturer to submit or resubmit certification pursuant to OAR 330-092-0035 and any other documentation demonstrating that the product meets the applicable minimum energy efficiency standard.

(5) The Department may require the manufacturer to provide test results or other documentation verifying that a product meets Oregon's minimum energy efficiency standards for that category of equipment.

Stat. Auth.: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)
Stats. Implemented: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)
Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08

330-092-0045

Labeling

(1) Except as provided in subsections (2) through (5) of this section, a product which is listed as "Compliant" in the M-SCS database will be deemed to meet Oregon's labeling requirements if that product is permanently, legibly and conspicuously marked, labeled or tagged on an accessible place on each unit with the following information:

(a) Manufacturer's name or brand name or trademark, which shall be either the name, brand or trademark of the listed manufacturer reporting compliance pursuant to OAR 330-092-0035;

(b) Model number; and

(c) Date of manufacture, indicating at least the year and month. If the date is in a code that is not readily accessible to the lay person, the manufacturer shall immediately, upon request, provide the code to the Department.

(2) For lamps, the information required by subsection (1) of this section shall be permanently, legibly, and conspicuously displayed on an accessible place on each unit, on the unit's packaging, or, where the unit is contained in a group of several units in a single package, on the packaging of the group.

(3) For single voltage external AC to DC power supplies, each power supply shall be marked on its nameplate with the appropriate numeral, specified below, if it meets or exceeds both the no-load and the average

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active mode efficiency requirements associated with that numeral at each tested voltage and frequency value marked on its nameplate, when tested in accordance with the test method in ORS 469.233(7)(b).

(a) "III" for those models certified under OAR 330-092-0035 as complying with the Oregon standards effective January 1, 2008, but not certified in California as complying with the California standards effective July 1, 2008. For models that are able to operate at both 115 volts/60 Hz and 230 volts/50 Hz, but show compliance only at 115 volts, the Roman numeral "III" marking shall include a reference to "115V."

(b) "IV" for those models certified in California as complying with the California standards effective July 1, 2008. For models that are able to operate at both 115 volts/60 Hz and 230V/50 Hz, but show compliance only at 115 volts, the Roman numeral "IV" marking shall include a reference to "115V."

(c) The mark shall comply with the following:

(i) Format. Roman numeral: III or IV (for models showing compliance only at 115 volts, the Roman numeral marking shall so designate).

(ii) Font. Preferred Times Roman (or other plain serif fonts).

(iii) Size. Legible.

(iv) Color. Text to contrast with the nameplate background, except that if the marking required by these regulations is molded into the housing of the external power supply, the text need not contrast with the nameplate background.

(4) The Department may waive marking, labeling or tagging requirements for products marked, labeled or tagged in compliance with federal requirements.

(5) The Department may grant a waiver from these labeling requirements on a case-by-case basis for a category of equipment if it determines:

(a) Oregon's labeling requirements would be different and more burdensome than requirements in other states with similar standards.

(b) Current labeling materially complies with the intent of Oregon's labeling requirements.

(c) Compliance with subsection (1) would be impractical.

(d) Labeling is unnecessary.

(e) No waiver will be made for an individual manufacturer or individual product.

Stat. Auth.: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)

Stats. Implemented: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08

330-092-0050

Determination of Non-Compliance

(1) If a manufacturer has not submitted certification to the Department pursuant to OAR 330-092-0035 for a product, the Department may change the Oregon status in the M-SCS to "Needing Attestation" and require the manufacturer to provide such certification within 30 days. If certification is not received within 30 days, the Department may change the status to "Non-Compliant" until such time as the certification is provided.

(2) The Department may review any product if it has cause to believe the product may not comply with Oregon's appliance efficiency standards.

(3) The Department will notify a manufacturer in writing of its review of a product for compliance with the appropriate appliance energy efficiency standard, including:

(a) Identification of the product.

(b) An explanation of deficiencies in compliance with the applicable standards, testing requirements, or labeling requirements.

(c) The action the Department proposes to take if it determines the product is non-compliant or the information supplied to the Department through the database or other means is in error.

(4) The manufacturer must respond to the notice of deficiency within fifteen days of mailing.

(5) The Department will make its final determination within fifteen days of receiving the manufacturer's response.

Stat. Auth.: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)

Stats. Implemented: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08

330-092-0055

Appeals

(1) A manufacturer may request reconsideration of the Department's order in writing. The Department will respond within fifteen days of receipt of a request for reconsideration.

(2) A manufacturer may appeal an action taken by Department staff to the Director. An appeal shall state as clearly as possible the original request,

the action taken by staff, and any relevant information demonstrating why the manufacturer believes the Department action is in error.

(3) The Director will respond to an appeal within fifteen days.

Stat. Auth.: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)

Stats. Implemented: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08

330-092-0060

Postponing Operative Date of Minimum Energy Efficiency Standards

(1) As provided in ORS 469.261(1)(c), the Department may adopt rules to postpone for up to one year the operative date of any minimum energy efficiency standard for one of the following reasons.

(a) Adjoining states with similar standards have postponed the operative date of their corresponding minimum energy efficiency standard; or.

(b) Failure to modify the operative date of any of the minimum efficiency standards would impose a substantial hardship on manufacturers, retailers, or the public.

(2) If at the end of the first postponement period the director determines that adjoining states have further postponed the operative date of minimum efficiency standards and the requirements of subparagraph (A) of ORS 469.229(1)(c) continue to be met, the director may postpone the operative date for not more than one additional year.

Stat. Auth.: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)

Stats. Implemented: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08

330-092-0065

Adopting and Updating Minimum Energy Efficiency Standards

(1) As provided in ORS 469.261(1), the Department may adopt rules to update minimum energy efficiency standards or to establish new minimum energy efficiency standards, including test methods and labeling requirements. Minimum energy efficiency standards adopted pursuant to this subsection may not take effect until one year following their adoption by the Director.

(2) The Department may consider any of the following reasons in determining whether to adopt new minimum energy efficiency standards pursuant to subsection (1) of this section.

(a) To promote energy conservation in Oregon. For example, new standards may be established if technological improvements have become available, or if there is a critical need for additional savings in Oregon.

(b) To achieve cost-effectiveness. For example, new standards may be established if costs have been substantially reduced, or if energy prices have substantially increased. Alternatively, standards may be eased if there is substantial evidence demonstrating it is economically or technologically impractical for manufacturers to meet the standard, or to meet the standard by a particular date.

(c) Due to federal action or to the outcome of collaborative consultations with manufacturers and the energy departments of other states. In addition, standards may be amended to be consistent with standards adopted in other states, with particular attention to standards on Washington and California.

Stat. Auth.: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)

Stats. Implemented: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08

330-092-0070

Mailing List

Pursuant to ORS 183.355(8), the Department will establish a mailing list of manufacturers for each category of regulated equipment and other interested parties to give notice of program information including proposed rulemaking.

Stat. Auth.: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)

Stats. Implemented: ORS 469.229-469.261, 469.040(1)(d), OL 2007, Ch. 375 (HB 2565) & OL 2007, Ch. 469 (SB 375)

Hist.: DOE 2-2008, f. 2-28-08, cert. ef. 3-1-08

Department of Environmental Quality Chapter 340

Rule Caption: Disclosure of the Relationship between Proposed Rules and Federal Requirements.

Adm. Order No.: DEQ 1-2008

Filed with Sec. of State: 2-25-2008

ADMINISTRATIVE RULES

Certified to be Effective: 2-25-08
Notice Publication Date: 10-1-2007

Rules Amended: 340-011-0010, 340-011-0029

Subject: The Oregon Department of Environmental Quality (DEQ) revised two Oregon Administrative Rules (OARs) that direct the Department's rulemaking procedures. These changes were necessary to comply with Senate Bill 107, Section 3 that the 2007 legislature enacted. DEQ revised OAR 340-011-0010 to accommodate new requirements when noticing an intent to adopt, amend or repeal DEQ administrative rules. Also, the agency revised OAR 340-011-0029(1) and (2) to reflect the new requirements regarding DEQ disclosure of the relationship between proposed administrative rules and applicable federal requirements. By this rulemaking, DEQ removed from rule the disclosure form (OAR 340-011-0029, table 1) it has used in its disclosure process. The questions that provide the basis of disclosure will remain in administrative rules and are being updates to reflect Senate Bill 107, Section 3 requirements.

Senate Bill 107, Section 3 also requires DEQ establish specific procedures related to its rules affecting Title V operating permits; Title V of the Federal Clean Air Act requires that each major industrial source of air pollution obtain and comply with an operating permit. DEQ revised 340-011-0029(3) to ensure that those impacted by DEQ rules related to facilities regulated by Title V permits have an opportunity, as now required by law, to discuss those impacts before the Environmental Quality Commission.

Rules Coordinator: Larry McAllister—(503) 229-6412

340-011-0010

Notice of Rulemaking

(1) Notice of intent to adopt, amend, or repeal any rule(s) shall be in compliance with applicable state and federal laws and rules, including ORS Chapter 183, ORS 468A.327 and sections (2) and (3) of this rule.

(2) To the extent required by ORS Chapter 183 or ORS 468A.327, before adopting, amending or repealing any permanent rule, the Department will give notice of the rulemaking:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 14 days before a hearing;

(b) By providing a copy of the notice to persons on the Department's mailing lists established pursuant to ORS 183.335(8), to the legislators specified in ORS 183.335(15), and to the persons or association that requested the hearing (if any):

(A) At least 21 days before a hearing granted or otherwise scheduled pursuant to ORS 183.335(3); or

(B) At least 14 days before a hearing before the Commission if granted or otherwise scheduled under OAR 340-011-0029(3);

(c) In addition to the news media on the list referenced in (b), to other news media the Director may deem appropriate.

(3) In addition to meeting the requirements of ORS 183.335(1), the notice provided pursuant to section (1) of this rule shall contain the following:

(a) Where practicable and appropriate, a copy of the rule proposed to be adopted, amended or repealed with changes highlighted;

(b) Where the proposed rule is not set forth verbatim in the notice, a statement of the time, place, and manner in which a copy of the proposed rule may be obtained and a description of the subject and issues involved in sufficient detail to inform a person that the person's interest may be affected;

(c) If a hearing has been granted or scheduled, whether the presiding officer will be the Commission, a member of the Commission, an employee of the Department, or an agent of the Commission;

(d) The manner in which persons not planning to attend the hearing may offer for the record written comments on the proposed rule.

Stat. Auth.: ORS 183 & ORS 468, 468A.327

Stats. Implemented: ORS 183.025 & 183.335

Hist.: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 122, f. & ef. 9-13-76; 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 1-2008, f. & cert. ef. 2-25-08

340-011-0029

Policy on Disclosure of the Relationship Between Proposed Rules and Federal Requirements

(1) In order to clearly identify the relationship between the proposed adoption, amendment or repeal of rules and applicable federal require-

ments, and to facilitate consideration and rulemaking by the Environmental Quality Commission, the Department, must:

(a) Prepare a statement of whether the intended action imposes requirements different from, or in addition to, any applicable federal requirements and, if so, a written explanation of:

(A) The public health, environmental, scientific, economic, technological, administrative or other reasons, as appropriate, for differing from or adding to applicable federal requirements; and

(B) Alternatives considered, if any, and the reasons that the alternatives were not pursued.

(b) Include the statement in the notice of intended action pursuant to ORS 183.335(1) and any additional notice given prior to a rulemaking hearing pursuant to OAR 340-011-0010(2).

(c) Include the statement in the final staff report presented to the Commission when rule adoption, amendment or repeal is recommended.

(2) The statement prepared under section (1)(a) of this rule must be based upon information available to the Department at the time the statement is prepared.

(3) An opportunity for an oral hearing before the Commission regarding the statement prepared under section (1)(a) of this rule must be granted, and notice given in accordance with OAR 340-011-0010(2)(b)(B), if:

(a) The rulemaking proposal applies to a source subject to the Oregon Title V Operating Permit Fees under OAR 340 Division 220;

(b) The request for a hearing is received within 14 days after the notice of intended action is issued under ORS 183.335(1), from 10 persons or from an association having no fewer than 10 members;

(c) The request describes how the persons or association that made the request will be directly harmed by the rulemaking proposal; and

(d) The notice of intended action under ORS 183.335(1) does not indicate that an oral hearing will be held before the Commission.

(4) Nothing in this rule applies to temporary rules adopted pursuant to OAR 340-011-0042.

(5) The Commission delegates to the Department the authority to prepare and issue any statement required under ORS 468A.327.

Stat. Auth.: ORS 468.020, ORS 468A.327

Stats. Implemented: ORS 183.025 & 183.335

Hist.: DEQ 28-1994, f. & cert. ef. 11-17-94; DEQ 1-2008, f. & cert. ef. 2-25-08

Rule Caption: Clarifying and Updating References in State Revolving Fund Rules (OAR 340-054).

Adm. Order No.: DEQ 2-2008

Filed with Sec. of State: 2-27-2008

Certified to be Effective: 2-27-08

Notice Publication Date: 10-1-2007

Rules Amended: 340-054-0035, 340-054-0060

Subject: The Oregon Department of Environmental Quality (DEQ) Clean Water Revolving Fund (CWSRF) program has updated the environmental review process for projects seeking CWSRF funding. That process is outlined in the Department's CWSRF Procedures Manual (Manual). The 2003 Manual is being updated to replace the Alternative State Environmental Review Process (Alternative SERP) with a new, more comprehensive State Environmental Review Process (SERP), as required by EPA to continue annual federal grants in support of the CWSRF loan program. Two administrative rules, OAR 340-054-0035 and -0060, currently cross-reference the Manual. DEQ has amended those two rules to delete outdated references to the 2003 Manual and remove the term "alternative" from rule. Finally, this rulemaking has deleted one sentence of text in OAR 340-054-0035(1)(c) that was inconsistent with the revised SERP. No other changes were proposed in this rulemaking.

The rule amendments confirm and clarify DEQ's authority to administer the CWSRF program consistent with the updated, Procedures Manual and the updated environmental review process therein, and consequently, with federal requirements for state environmental review processes.

Rules Coordinator: Larry McAllister—(503) 229-6412

340-054-0035

Final Stage of Application Process for Design Loans or Construction Loans

The Department will administer loans for design and construction of both point source and nonpoint source projects.

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(1) In addition to the loan application and items specified in OAR 340-054-0024(1), applicants applying for a CWSRF loan for a design or construction project must submit the following documents to be considered for loan approval:

(a) A planning document that the Department determines adequately documents the efficacy and appropriateness of the proposed project to remediate the identified water pollution control problem. For sewage collection systems or sewage treatment facilities, the planning document must meet the requirements of the Department's CWSRF Procedures Manual (February 1, 2008) and other planning guidance in effect at the time of submittal

(b) In accordance with OAR 340-018-0050, a Land Use Compatibility Statement (LUCS) from the appropriate planning jurisdiction demonstrating compliance with the Department of Land Conservation and Development's (DLCD) acknowledged comprehensive land use plan and statewide land use planning goals.

(c) An environmental review prepared in accordance with the requirements of the EPA approved State Environmental Review Process (SERP) described in the CWSRF Procedures Manual (February 1, 2008).

(d) Any other information requested by the Department.

(2) In addition to the requirements of section (1) of this rule, applicants for a CWSRF loan for the design or construction of sewage collection systems or sewage treatment projects must submit the following documents to be considered for loan approval:

(a) A Department approved sewer use ordinance adopted by all municipalities and service districts serviced by this project that meets the provisions of this section. The sewer use ordinances must prohibit any new connections from inflow sources into the sewage collection system; and require that no wastewater introduced into the sewage collection system contain toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety or adversely affecting the project or precluding the selection of the most cost-effective alternative for the project.

(b) A demonstration that the Applicant has adopted a user charge system that meets the requirements of the User Charge System section of the CWSRF Procedures Manual (February 1, 2008).

(c) For projects serving two or more municipalities, the Applicant must submit the executed inter-municipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed sewage collection system or sewage treatment facility.

(d) In accordance with OAR Chapter 340, division 052, Applicants for construction-only loans must submit Department approved plans and specifications for the project as applicable.

(e) For projects with estimated costs in excess of \$10 million, the Applicant must submit a value engineering study prepared in accordance with the requirements of the CWSRF Procedures Manual (February 1, 2008).

Stat. Auth.: ORS 468.423 - 468.440

Stats. Implemented: ORS 468.433 & 468.437

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; Administrative correction 10-29-98; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 2-2008, f. & cert. ef. 2-27-08

340-054-0060

Loan Agreement and Conditions

Each loan agreement will include conditions applicable to the type of project being financed, which include, but are not limited to, the following:

(1) Accounting. The Borrower must maintain all CWSRF project accounts as separate accounts and must use accounting, audit and fiscal procedures that conform to Generally Accepted Governmental Accounting Standards and the requirements of the Governmental Accounting Standards Board.

(2) Records. The Borrower must retain project files and records for at least three years after performance certification or project completion as determined by the Department. Financial files and records must be retained until the loan is repaid in full.

(3) Wage Rates. The Applicant must ensure compliance with applicable federal or state wage rates, if any, for construction projects.

(4) Operation and Maintenance Manual. For the construction of a sewage collection system or a sewage treatment facility subject to OAR chapter 340, division 052, the Borrower must submit a draft and final facility operation and maintenance manual at the time and in a format specified by the Department.

(5) Plans and Specifications. For the construction of a sewage collection system or a sewage treatment facility subject to OAR chapter 340, division 052, the Borrower must obtain the Department's approval of project plans and specifications before commencement of construction.

(6) Inspections and Progress Reports.

(a) During the construction phase of a sewage collection system or a sewage treatment facility subject to OAR chapter 340, division 052, the Borrower must provide on-going inspections to ensure the project complies with approved plans and specifications. These inspections must be conducted by qualified inspectors under the direction of a registered civil, mechanical or electrical engineer, whichever is appropriate. The Department or its representative may enter property owned or controlled by the Borrower to conduct interim inspections and require progress reports sufficient to determine compliance with approved plans and specifications and with other provisions of the loan agreement.

(b) For projects not subject to Department review under OAR chapter 340, division 052, the Department may seek the review and analysis of construction plans from relevant agencies or offices to ensure those plans support the successful implementation and completion of the project. During implementation of the project, the Borrower must allow inspections by appropriately qualified persons to ensure that the project as constructed conforms to project plans and other provisions of the loan agreement.

(7) Loan Amendments. Changes in project work that are consistent with the objectives of the project and within the scope and funding level of the loan do not require the execution of a formal loan amendment. A loan amendment will be required in the following situations:

(a) The Borrower receives an increase in the original approved loan amount at any time during the project. The Department may approve loan increases if funds are available, and the Borrower demonstrates both the legal authority to borrow and the financial capability to repay the increased loan amount.

(b) The Borrower requests a decrease in the original loan amount at any time during the project or completes the project and does not request disbursement of all loan proceeds.

(8) Change Orders. The Borrower must submit Change Orders to the Department for engineering and financial review. The Department will approve or reject the Change Orders based on the loan eligibility of the project modifications and on its engineering value in accordance with OAR 340-052-0015.

(9) Project Performance Certification for a sewage collection system or sewage treatment facility. The Borrower must submit to the Department a Project Performance Certification that meets the requirements of the CWSRF Procedures Manual (February 1, 2008) within the time frame specified by the Department.

(10) Eligible Construction Costs. Loan disbursements for construction costs will be limited to work that complies with plans, specifications, change orders and addenda approved by the Department.

(11) Adjustments. The Department may, at any time, review and audit requests for payment and make adjustments for eligibility, math errors, items not built or bought, unacceptable construction and other discrepancies.

(12) Contract and Bid Documents. The Borrower must submit a copy of the awarded contract and bid documents to the Department, including a tabulation of all bids received.

(13) Audit. Borrowers may satisfy audit requirements in one of the following two ways:

(a) An External Audit. Within one year after Performance Certification, the Borrower must submit an audit of the project expenditures consistent with Generally Accepted Accounting Principles conducted by a certified auditor. The Borrower will pay for this audit.

(b) Internal documentation. The Borrower must submit to the Department:

(A) A complete accounting of project costs incurred by the Borrower including documentation to support each cost element; and

(B) One copy of the Borrower's annual audited financial report each year until the loan is repaid. Audit compliance with OMB A-133 is required if federal funds are disbursed as loan proceeds.

(14) Operation and Maintenance. The Borrower must provide the necessary resources for adequate operation, maintenance and replacement of a sewage facility, nonpoint source control or estuary management project and retain sufficient operating personnel to operate the facility.

(15) Default Remedies. Upon default by a Borrower, the Department may:

(a) Pursue any remedy available at law or in equity.

(b) Appoint a receiver at the expense of the Borrower to operate the facility that produces the pledged revenues.

(c) Set and collect utility rates and charges.

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(d) Withhold any amounts otherwise due to the Borrower from the State of Oregon and direct that such funds be applied to the debt service and fees due on the CWSRF loan. If the Department finds that the loan to the Borrower is otherwise adequately secured, the Department may waive this right to withhold state revenue due to the Borrower.

(16) Release. The Borrower shall release and discharge the Department, its officers, agents and employees from all liabilities, obligations and claims arising out of the project work or under the loan, subject only to exceptions previously agreed upon in a written contract between the Department and the Borrower.

(17) Effect of Approval or Certification of Documents. Review and approval of facilities plans, design drawings and specifications, or any other documents by or for the Department does not relieve the Borrower of responsibility to properly plan, design, build and effectively operate and maintain a sewage facility, nonpoint source control or estuary management project as required by law, regulations, permits and good management practices. The Department is not responsible for any project costs or any losses or damages resulting from defects in the plans, design drawings and specifications, or other sub-agreement documents. The Department is not responsible for verifying cost-effectiveness, cost comparisons or adherence to state procurement regulations.

(18) Reservation of Rights:

(a) Nothing in this rule prohibits a Borrower from requiring more assurances, guarantees, indemnity or other contractual requirements from any party performing project work; and

(b) Nothing in the rule affects the Department's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a Borrower that fails to carry out its obligations under OAR Chapter 340.

(19) Other Provisions. CWSRF loan agreements will contain such other provisions as the Department may reasonably require to meet the goals of the Clean Water Act and ORS 468.423 to 468.440.

Stat. Auth.: ORS 468.423 - 468.440

Stats. Implemented: ORS 468.433 & 468.437

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 31-1989(Temp), f. & cert. ef. 12-14-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; Administrative Correction; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 2-2008, f. & cert. ef. 2-27-08

Rule Caption: Align Tank Rules with federal regulations, Improve Existing Rules.

Adm. Order No.: DEQ 3-2008

Filed with Sec. of State: 2-29-2008

Certified to be Effective: 3-10-08

Notice Publication Date: 11-1-2007

Rules Adopted: 340-150-0210

Rules Amended: 340-122-0210, 340-122-0330, 340-150-0006, 340-150-0008, 340-150-0010, 340-150-0020, 340-150-0021, 340-150-0052, 340-150-0102, 340-150-0110, 340-150-0135, 340-150-0150, 340-150-0152, 340-150-0160, 340-150-0163, 340-150-0166, 340-150-0167, 340-150-0168, 340-150-0180, 340-150-0200, 340-150-0250, 340-150-0300, 340-150-0310, 340-150-0350, 340-150-0352, 340-150-0354, 340-150-0360, 340-150-0410, 340-150-0430, 340-150-0450, 340-150-0455, 340-150-0460, 340-150-0465, 340-150-0470, 340-150-0510, 340-150-0555, 340-150-0560, 340-160-0030, 340-160-0150, 340-162-0005, 340-162-0010, 340-162-0020, 340-162-0040, 340-162-0150

Rules Repealed: 340-162-0054

Subject: This rulemaking aligns Tank Rules with federal regulations in addition to improving existing rules.

A) The federal Energy Policy Act of 2005 contains underground storage tank (UST) provisions that requires the Department to adopt rules to;

Revise the current UST operator training requirements;

Implement fuel delivery prohibition requirements;

Require secondary containment and monitoring for new or replaced tanks or piping.

B) Amendments by the 2007 Oregon Legislature to laws governing USTs require the Department to:

Increased the annual tank fee (from \$85/year to \$135/year); and

Establish a permanent expedited enforcement program and increase penalty amounts (from a maximum of \$100 to \$500 per violation and an increased aggregate of \$1,500 from \$300).

This rulemaking proposal also improves existing UST regulations by:

Changing the operating registration certificate to a certificate that is renewed annually;

Clarifying rule language and resolving existing technical issues;

Aligning the definition of an UST in Division 122 to that in Division 150; and

Revising the UST service provider licenses.

Rules Coordinator: Larry McAllister—(503) 229-6412

340-122-0210

Definitions

Terms not defined in this rule have the meanings set forth in ORS 465.200 and 466.706. Additional terms are defined as follows unless the context requires otherwise:

(1) "*Above-Ground Release*" means any release to the land surface or to surface water. This includes, but is not limited to, releases from the above ground portion of a petroleum UST system and releases associated with overfills and transfer operations during petroleum deliveries to or dispensing from a petroleum UST system.

(2) "Acceptable Risk Level" has the meanings set forth in OAR 340-122-0115(1) through (6).

(3) "*Ancillary Equipment*" means any device, including but not limited to, piping, fittings, flanges, valves and pumps used to distribute, meter or control the flow of petroleum to and from a petroleum UST system.

(4) "*Aquatic Sediments*" means any collection of fine-, medium-, and coarse-grained minerals and organic particles that are found within aquatic habitats.

(5) "*Below-Ground Release*" means any release to the land subsurface having concentrations detected by the Northwest Total Petroleum Hydrocarbon Identification Analytical Method (NWTPH-HCID, DEQ, December 1996) or to groundwater having concentrations detected by any appropriate analytical method specified in OAR 340-122-0218. This includes, but is not limited to, releases from the below ground portion of a petroleum UST system and releases to the land subsurface or groundwater associated with overfills and transfer operations as the petroleum is delivered to or dispensed from a petroleum UST system.

(6) "*Buildings*" means any structure occupied by residents, workers or visitors, including convenience stores for retailing of food. For purposes of these rules, "buildings" does not include service station kiosks less than 45 square feet in size if the kiosk is exclusively dedicated to services for motor vehicles.

(7) "*Certified Drinking Water Protection Area*" means an area that has been delineated by the Oregon Health Division in accordance with OAR 333-061-0057 and certified by the department in accordance with OAR 340-040-0180.

Note: To obtain information about certified drinking water protection areas, contact the Oregon Health Division's Drinking Water Program (503-731-4010).

(8) "*Confirmed Release*" means petroleum contamination observed in soil or groundwater as a sheen, stain or petroleum odor, or petroleum contamination detected in soil by the Northwest Total Petroleum Hydrocarbon Identification Analytical Method (NWTPH-HCID, DEQ, December 1996) or detected in groundwater by any appropriate analytical method specified in OAR 340-122-0218.

(9) "*Contaminant of Concern*" means a hazardous constituent contained in petroleum present at a concentration posing a potentially unacceptable risk to public health, safety or welfare or the environment.

(10) "*Engineering Control*" means a remedial method used to prevent or minimize exposure to petroleum and hazardous substances, including technologies that reduce the mobility or migration of petroleum and hazardous substances. Engineering controls may include, but are not limited to, capping, horizontal or vertical barriers, hydraulic controls and alternative water supplies.

(11) "*Excavation Zone*" means an area containing a petroleum UST system and backfill material bounded by the ground surface, walls and floor of the pit and trenches into which the petroleum UST system is placed at the time of installation.

(12) "*Free Product*" means nonaqueous phase liquid petroleum.

(13) "*Gasoline*" means any petroleum distillate used primarily for motor fuel of which more than 50 percent of its components have hydrocarbon numbers of C10 or less. For purposes of OAR 340-122-0205 through

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340-122-0360, the concentration of gasoline in soil or groundwater is the level determined by the Northwest Total Petroleum Hydrocarbon Method NWTPH-Gx.

(14) “*Groundwater*” means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir, or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.

(15) “*Hazardous Substance*” has the meaning set forth in OAR 340-122-0115(30).

(16) “*Heating Oil*” means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, or No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); or other fuels when used as substitutes for one of these fuel oils.

(17) “*Heating Oil Tank*” means any one or combination of underground tanks and above ground or underground pipes connected to the tank, which is used to contain heating oil used for space heating a building with human habitation, or water heating not used for commercial processing.

(18) “*Institutional Control*” means a remedial method such as a legal or administrative tool or action used to reduce the potential for exposure to petroleum and hazardous substances. Institutional controls may include, but are not limited to, use restrictions and site access and security measures.

(19) “*Motor Fuel*” means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or 2 diesel fuel or any grade of gasohol, typically used in the operation of a motor engine.

(20) “*Native Soil*” means the soil outside of the immediate boundaries of the pit that was originally excavated for the purpose of installing an underground storage tank.

(21) “*NonGasoline Fraction*” means diesel and any other petroleum distillate used for motor fuel or heating oil, of which more than 50 percent of its components have hydrocarbon numbers of C11 or greater. For purposes of OAR 340-122-0205 through 340-122-0360, the concentration of nongasoline fraction in soil or groundwater is the level determined by the Northwest Total Petroleum Hydrocarbon Method NWTPH-Dx.

(22) “*Petroleum*” or “*oil*” means gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge, oil refuse and crude oil fractions and refined petroleum fractions, including gasoline, kerosene, heating oils, diesel fuels and any other petroleum-related product or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute. “*Petroleum*” does not include any substance identified as a hazardous waste under 40 CFR Part 261.

(23) “*Petroleum UST System*” has the same meaning as given in OAR 340-150-0010(55).

(24) “*Remediation*” or “*Remedial Measures*” include “remedial action” as defined in ORS 465.200(22), “removal” as defined in ORS 465.200(24) and “corrective action” as defined in ORS 466.706(3).

(25) “*Remediation Level*” means a concentration of petroleum or petroleum constituents in environmental media such as soil and groundwater that alone, or in combination with institutional controls or engineering controls, is determined to be protective of public health, safety and welfare and the environment in accordance with this division.

(26) “*Residential Heating Oil Tank*” means a heating oil tank used primarily for single family dwelling purposes.

(27) “*Responsible Person*” includes “owner” as defined in OAR 340-150-0010(51), “permittee” as defined in OAR 340-150-0010(52), “owner or operator” as defined in ORS 465.200(19) and any other person liable for or voluntarily undertaking remediation under ORS 465.200, et seq. or ORS 466.706, et seq.

(28) “*Risk-Based Concentration*” means a concentration of petroleum or petroleum constituents in environmental media such as soil and groundwater that is determined to be protective of public health, safety and welfare and the environment in accordance with these rules without requiring institutional controls or engineering controls.

(29) “*Soil*” means any unconsolidated geologic materials including, but not limited to, clay, loam, loess, silt, sand, gravel and tills or any combination of these materials.

(30) “*Surface Water*” means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, wetlands, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(31) “*Suspected Release*” means those conditions described in OAR 340-150-0500.

(32) “*Underground storage tank*” or “*UST*” means any one or combination of tanks (including connected underground pipes) that contains or used to contain a regulated substance and the volume of which (including the volume of connected underground pipes) is 10 percent or more beneath the ground surface or otherwise covered by earthen materials.

NOTE: OAR 340-150-0500 requires owners and permittees of UST systems to report suspected releases to the department. Owners and permittees must refer to OAR 340, division 150 for complete information on requirements for underground storage tanks.

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

Stat. Auth.: ORS 465.400 & 466.746

Stats. Implemented: ORS 465.200 - 465.455, 466.706 - 466.83

Hist.: DEQ 29-1988, f. & cert. ef. 11-9-88; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 13-1992, f. 6-9-92, cert. ef. 10-1-92; DEQ 23-1998, f. & cert. ef. 11-2-98; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-122-0330

Evaluation Parameters

The site-specific parameters are to be scored as specified in this section. If any of the parameters in sections (1)-(5) of this rule is unknown, that parameter must be given a score of ten:

(1) Depth to Groundwater: This is the vertical distance (rounded to the nearest foot) from the surface of the ground to the highest seasonal elevation of the saturated zone. The score for this parameter is:

- (a) > 100 feet, 1;
- (b) 51-100 feet, 4;
- (c) 25-50 feet, 7;
- (d) < 25 feet, 10.

(2) Mean Annual Precipitation: This measurement may be obtained from the nearest appropriate weather station. The score for this parameter is:

- (a) < 20 inches, 1;
- (b) 20-45 inches, 4;
- (c) > 45 inches, 10.

(3) Native Soil or Rock Type: The score for this parameter is:

(a) Low permeability materials such as clays, silty clays, compact tills, shales, and unfractured metamorphic and igneous rocks, 1;

(b) Moderate permeability materials such as fine and silty sands, sandy loams, loamy sands, and clay loams; moderately permeable limestones, dolomites and sandstones; and moderately fractured igneous and metamorphic rocks, 5;

(c) High permeability materials such as sands and gravels, highly fractured igneous and metamorphic rocks, permeable basalts and lavas, and karst limestones and dolomites, 10.

(4) Sensitivity of the Uppermost Aquifer: Due to the uncertainties involved in the Matrix evaluation process, this factor is included to add an extra margin of safety in situations where critical aquifers have the potential to be affected. The score for this parameter is:

(a) Unusable aquifer, either due to water quality conditions such as salinity, etc.; or due to hydrologic conditions such as extremely low yield, 1;

(b) Potable aquifer not currently used for drinking water, but the quality is such that it could be used for drinking water, 4;

(c) Potable aquifer currently used for drinking water; alternate unthreatened sources of water readily available, 7;

(d) Sole source aquifer currently used for drinking water; there are no alternate unthreatened sources of water readily available, 10.

(5) Potential Receptors: The score for potential receptors is based on both the distance to the nearest well and also the number of people at risk. Each of these two components is to be evaluated using the descriptors defined in this section:

(a) The distance to the nearest well is measured from the area of contamination to the nearest well that draws water from the aquifer of concern. If a closer well exists which is known to draw water from a deeper aquifer, but there is no evidence that the deeper aquifer is completely isolated from the contaminated aquifer, then the distance must be measured to the closer, deeper well. The distance descriptors are:

- (A) Near, < 1/2 mile;
- (B) Medium, 1/2-2 miles;
- (C) Far, > 2 miles.

(b) The number of people at risk is to include all people served by drinking water wells which are located within two miles of the contaminated area. For public wells, count the number of users listed with the Oregon Health Division, Drinking Water Systems Section. For private wells, assume three residents per well. In lieu of a door-to-door survey of private wells, it

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may be assumed that there is one well per residence. The number descriptors are:

- (A) Many, > 3000;
- (B) Medium, 100-3000;
- (C) Few, < 100.

(c) The score for this parameter is taken from the combination of the two descriptors using the following grid: [Grid not included. See ED. NOTE.]

(6) The Matrix Score for a site is the sum of the five parameter scores in sections (1)-(5) of this rule.

[ED. NOTE: The Grid referenced is available from the agency.]

Stat. Auth.: ORS 465.400 & 466.746

Stats. Implemented: ORS 465.200 - 465.455 & 466.706 - 466.835

Hist.: DEQ 15-1989, f. & cert. ef. 7-28-89 (and corrected 8-3-89); DEQ 46-1990, f. 12-26-90, cert. ef. 3-1-91; DEQ 23-1998, f. & cert. ef. 11-2-98; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0006

Applicability and General Requirements

(1) An owner and permittee of an UST system as defined by OAR 340-150-0010(86) must comply with this division, except to the extent the system is exempted or compliance deferred or limited by OAR 340-150-0008.

(2) An owner and permittee of an UST system must apply to the department for a general permit registration certificate under OAR 340-150-0020 if the UST system:

(a) Is in operation on or after May 1, 1988;

(b) Was taken out of operation between January 1, 1974, and May 1, 1988, and not permanently closed by a method that meets the requirements of OAR 340-150-0168(4); or

(c) Was taken out of operation before January 1, 1974, but still contains a regulated substance (i.e., the UST is not empty).

(3) Each chamber or compartment of a multichamber or multicompart UST is an individual tank for the purpose of OAR chapter 340, divisions 150 and 151.

NOTE: Throughout this division, the term "owner and permittee" is used to denote joint responsibility for compliance. Where the owner and permittee are different, compliance by either will be deemed compliance by both.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.706, 466.710 & 466.746

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0008

Exemptions and Deferrals

(1) An UST located in Indian Country, as defined in 18 U.S.C. Subpart 1151, is exempt from the requirements of OAR chapter 340, divisions 150 and 151.

(2) Heating oil tanks are exempt from OAR chapter 340, divisions 150 and 151, but the heating oil tank owner must comply with the requirements of ORS 466.858 through 466.882 and OAR chapter 340, division 177.

(3) The following types of USTs and any connected piping are exempt from the requirements of OAR chapter 340, divisions 150 and 151:

(a) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes (i.e., not for resale);

(b) Septic tanks;

(c) Pipeline facilities (including gathering lines) that are:

(A) Regulated under 49 U.S.C. 60101, et seq., or

(B) Intrastate pipeline facilities regulated under State laws as provided in 49 U.S.C. 60101, et seq.,

and which are determined by the Secretary of Transportation, U.S. Department of Transportation to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline.

(d) Surface impoundments, pits, ponds or lagoons;

(e) Storm water or wastewater collection systems;

(f) Flow-through process tanks;

(g) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

(h) Storage tanks situated in an underground area (such as a basement, cellar, mine-working, drift, shaft or tunnel) if the storage tank is situated upon or above the surface of the floor;

(i) UST systems holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act (SWDA) or a mixture of such hazardous waste and other regulated substances;

(j) Wastewater treatment tank systems that are part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act;

(k) Equipment or machinery that contains regulated substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks;

(l) UST systems with a capacity of 110 gallons or less;

(m) UST systems that have never contained more than a "de minimis" concentration of regulated substances; and

(n) Emergency spill or overflow containment UST systems that are expeditiously (i.e., as soon as practicable after emergency has been abated) emptied after use.

(4) The following UST systems are deferred from the requirements of this division, with the exception of the conditions in sections (5) and (6) of this rule:

(a) Wastewater treatment tank systems;

(b) UST systems containing radioactive materials that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following);

(c) UST systems that are part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50 Appendix A;

(d) Airport hydrant fuel distribution systems; and

(e) UST systems with field constructed tanks.

(5) Installation of an UST system listed in section (4) of this rule for the purpose of storing regulated substances is prohibited unless the UST system (whether of single- or double wall construction):

(a) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(b) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material or designed in a manner to prevent the release or threatened release of any stored substance; and

(c) Is constructed or lined with material that is compatible with the stored substance.

(6) An owner of any UST system listed in section (4) of this rule must conduct corrective action in the event of a release from the system.

(7) An owner may use The **National Association of Corrosion Engineers Standard Recommended Practice RP0285**, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection," as guidance for complying with sections (4) and (5) of this rule.

(8) An owner and permittee of any UST system used solely to contain fuel for emergency power generators or used to contain fuel for both emergency power generators and heating must comply with all provisions of this division, except for the release detection requirements of OAR 340-150-0400 through 340-150-0470. Notwithstanding the foregoing, all new and replacement USTs used solely to contain fuel for emergency power generators, or used to contain fuel for both emergency power generators and heating, and connected piping must be secondarily contained and monitored using the interstitial monitoring release detection method specified in 340-150-0465 as provided in 340-150-0300(5).

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

Stat. Auth.: ORS 465.200 - 465.455, 466.706 - 466.835, 466.994, 466.995

Stats. Implemented: ORS 465.205, 465.400, 466.710 - 466.720, 466.746

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0010

Definitions

For the purpose of this division and as applicable for OAR chapter 340 divisions 151 and 160, the following definitions apply:

(1) "Ancillary equipment" means any devices including, but not limited to, connected piping, fittings, flanges, valves and pumps used to distribute, meter or control the flow of regulated substances to and from an UST.

(2) "As built drawing" or "as built" means a line drawing to-scale that accurately illustrates the location of USTs, underground piping and all related equipment in relation to buildings or other structures at an UST facility and provides thorough construction documentation. Note: Other terms used in lieu of "as built" are "record drawing" or "measured drawing", which indicate that the drawing is for an existing structure or UST system.

(3) "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, an UST system can be cathodically protected through the application of either galvanic anodes or impressed current.

(4) "Cathodic protection tester" means a person who demonstrates an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged underground metal piping and tank equipment.

(5) "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

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(6) "Change-in-service" means to transfer an UST system containing a regulated substance from regulated status (i.e., subject to the requirements of this division) to nonregulated status while the UST remains in its original location.

(7) "Class A operator" means the individual designated by the owner and permittee as having the primary responsibility for operation and maintenance of the UST system.

(8) "Class B operator" means the individual designated by the owner and permittee as having control of or responsibility for the day to day operation of an UST system, including the on-site operation and maintenance of the system in a manner that ensures the UST system is in compliance with applicable state and federal regulations and industry standards.

(9) "Class C operator" means an individual that is responsible for responding to alarms or other indications of emergencies caused by spills or releases from UST systems.

(10) "Closure" means to permanently decommission an UST (by removal, filling in-place with an inert material or change-in-service) or to temporarily remove an UST from operation.

(11) "Commission" means the Oregon Environmental Quality Commission.

(12) "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the UST system under conditions likely to be encountered in the UST.

(13) "Confirmed release" means:

(a) For petroleum. Contamination observed in soil or groundwater as a sheen, stain or petroleum odor or petroleum contamination detected in soil by the Northwest Total Petroleum Hydrocarbon Identification Analytical Method (NWTPH-HCID, DEQ, December 1996) or detected in groundwater by any appropriate analytical method specified in OAR 340-122-0218. or

(b) For hazardous substances other than petroleum. Contamination observed in soil or groundwater as a sheen, stain or identifiable odor or as detected in soil, surface water or groundwater by any appropriate analytical method specified in "Test Methods for Evaluating Solid Waste," SW-846, 3rd Edition, (U.S. Environmental Protection Agency EPA).

(14) "Connected piping" means all piping located beneath the ground surface or otherwise covered by earthen materials, including valves, elbows, joints, flanges and flexible connectors attached to an UST system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

(15) "Corrective action" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance. "Corrective action" includes but is not limited to:

(a) The prevention, elimination, removal, abatement, control, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or

(b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.

(16) "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged underground metal piping systems and metal tanks. Corrosion experts must be accredited or certified by NACE (National Association of Corrosion Engineers) and licensed by the department under OAR chapter 340, division 160.

(17) "Decommission" means temporary or permanent closure, including temporary or permanent removal from operation, filling in-place, removal from the ground or change-in-service to a nonregulated status.

(18) "Deferred" means an UST system that may be subject to state or federal regulation at some point in the future.

(19) "De minimis" means an insignificant amount of regulated substance (e.g., meets the definition of "empty") or is less than a reportable quantity as defined under CERCLA.

(20) "Department" means the Oregon Department of Environmental Quality.

(21) "Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate an UST system from the surrounding soils. Dielectric bushings are used to electrically isolate portions of an UST system (e.g., the tank from underground piping).

(22) "Dispenser" means a device that is used for the delivery of a regulated substance from an UST (e.g., fuel from an UST to a motor vehicle). The term includes associated metering, delivery mechanisms and other equipment contained inside a housing unit for the dispenser.

(23) "Distributor" means a person who is engaged in the business of selling, distributing or delivering regulated substances to an owner or permittee of an UST.

(24) "Earthen Materials" means materials originating from the earth (including, but not limited to, dirt, sand, gravel and rocks) or any other materials (including, but not limited to, wood) that have the potential to cause corrosion when placed in contact with a tank.

(25) "Electrical equipment" means equipment that is located beneath the ground surface or otherwise covered by earthen materials and contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

(26) "Emergency generator" means an engine that uses fuel (regulated substance) to produce auxiliary electrical or mechanical energy for use in emergencies.

(27) "Empty" means that all materials have been removed using commonly employed practices so that no more than one inch (2.5 centimeters) of residue or 0.3 percent by weight of the total capacity of the tank remain in the UST system.

(28) "Excavation zone" means an area containing an UST system and backfill material bounded by the ground surface, walls and floor of the pit and trenches into which the UST system is placed at the time of installation.

(29) "Farm tank" means a tank located on a tract of land devoted to the production of crops or raising animals, including fish and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

(30) "Fee" means a fixed charge or service charge.

(31) "Field constructed tank" means an UST that is constructed at the location it will be installed rather than factory-built.

(32) "Field penalty" means a civil penalty amount assessed in a field citation.

(33) "Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials before their introduction into the production process or for the storage of finished products or by-products from the production process.

(34) "Free product" means a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

(35) "Gathering lines" means any pipeline, equipment, facility or building used in the transportation of oil or gas during oil or gas production or gathering operations.

(36) "General permit" means a permit issued for a category of UST activities (e.g., installing, decommissioning or operating an UST) in lieu of individual permits developed for each UST facility.

(37) "Hazardous substance UST system" means an UST system that contains a hazardous substance defined in section 101(14) of CERCLA or any mixture of such substances and petroleum and which is not a petroleum UST system (but not including any substance regulated as a hazardous waste under Subtitle C of the SWDA).

(38) "Heating oil" means petroleum that is No. 1, No. 2, No. 4 – light, No. 4 – heavy, No. 5 – light, No. 5 – heavy and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers or furnaces.

(39) "Heating oil tank" means a tank used for storing heating oil for consumptive use on the premises where stored (i.e., the tank is located on the same property where the stored heating oil is used).

(40) "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators and other similar devices.

(41) "Install" or "installation" means the physical construction of all or part of an UST system, including, but not limited to, activities such as excavating, backfilling, testing, placement of the tank, underground piping, release detection devices, corrosion protection systems, spill and overflow devices and any associated administrative activities such as notifications, record keeping and record submissions.

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(42) "Interstitial" means the space between the primary and secondary containment systems (i.e., the space between the inner and outer walls of a tank or pipe).

(43) "Investigation" means monitoring, surveying, testing, sampling, analyzing or other information gathering techniques.

(44) "Leak" has the same meaning as "release" as defined by OAR 340-150-0010(67).

(45) "Liquid traps" means sumps, well cellars and other traps used in association with oil and gas production, gathering and extraction operations (including gas production plants), for the purpose of collecting oil, water and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream or may collect and separate liquids from a gas stream.

(46) "Maintenance" means the normal operational upkeep to prevent an UST system from releasing a regulated substance or to ensure that a release is detected.

(47) "Modification" means to change an UST system currently in use by the installation of new UST system components. This includes, but is not limited to, the addition of corrosion protection to a previously lined tank, installation of new underground piping, changing the primary release detection method to one of the methods listed in OAR 340-150-0450 through 340-150-0470 or adding secondary containment. "Modification" does not include those activities defined as "repair" or "replacement".

(48) "Motor fuel" means petroleum or a petroleum based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel or any grade of gasohol and is typically used in the operation of a motor engine.

(49) "Multichamber" or "multicompartment" means an UST that contains two or more chambers or compartments created by the presence of an interior wall so that two or more regulated substances can be stored at the same time within a single tank shell. Even if the same regulated substance is stored in all chambers or compartments, the UST is a multichambered or multicompartmented UST for the purpose of these rules.

(50) "Native soil" means the soil outside of the immediate boundaries of the pit that was originally excavated for the purpose of installing an UST.

(51) "OAR" means Oregon Administrative Rules.

(52) "Operate" or "operation" means depositing a regulated substance into an UST, storing a regulated substance in or dispensing a regulated substance from an UST and such other activities, including, but not limited to, performing release detection, maintaining corrosion protection, preventing spills and overfills, investigating and confirming suspected releases, conducting maintenance, modifications, replacements and repairs of equipment, maintaining a financial responsibility mechanism and keeping and submitting records on the UST and underground pipings' performance.

(53) "Operational life" means the period beginning when installation of the UST system has commenced until the time the UST system is permanently closed.

(54) "ORS" means Oregon Revised Statutes.

(55) "Owner" means a person who currently owns an UST or owned an UST during the operational life of the tank, including:

(a) In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use or dispensing of regulated substances; and

(b) In the case of an UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

(56) "Permittee" means the owner or person designated by the owner, who is in control of or has responsibility for daily UST system operation and maintenance, financial responsibility and UST operator training requirements under a general permit pursuant to OAR 340-150-0160 through 340-150-0168.

(57) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity or the federal government or any agency of the federal government.

(58) "Petroleum" or "oil" means gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge, oil refuse and crude oil fractions and refined petroleum fractions, including gasoline, kerosene, heating oils, diesel fuels and any other petroleum-related product or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute. For the purposes of chapter 340, divisions 150 and 160, blends of gasoline with ethanol and diesel fuels with biodiesel are "petroleum". "Petroleum" does not include any substance identified as a hazardous waste under 40 CFR Part 261.

(59) "Petroleum UST system" means an UST system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils.

(60) "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials.

(61) "Pipeline facilities" (including gathering lines) means new and existing pipe rights-of-way and any associated equipment, facilities or buildings.

(62) "Probability of detection" means the likelihood, expressed as a percentage, that a test method will correctly identify a release from an UST system.

(63) "Probability of false alarm" means the likelihood, expressed as a percentage, that a test method will incorrectly identify an UST system as leaking when a release is not occurring.

(64) "Property owner" means the legal owner of the real property on which an UST is located.

(65) "Registration certificate" means a document issued by the department that authorizes a person to install, operate or decommission an UST system under a general permit pursuant to OAR 340-150-0160 through 340-150-0168.

(66) "Regulated substance" includes, but is not limited to:

(a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C of the SWDA);

(b) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); and

(c) Petroleum based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils.

(67) "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an UST into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law.

(68) "Release detection" or "leak detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment, into the interstitial space between the UST and its secondary barrier or into a secondary containment unit or sump around the UST.

(69) "Repair" means to restore any portion of an UST system that has failed, but does not include the activities defined by "modification" or "replacement".

(70) "Replacement" means to effect a change in any part of an UST system by exchanging one unit for a like or similar unit, but does not include activities defined as "repair" or "modification".

(71) "Residential tank" means a tank located on property used primarily for single family dwelling purposes.

(72) "Septic tank" means a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

(73) "Service provider" means a person licensed by the department to offer to perform or perform UST services on USTs regulated under OAR chapter 340, division 150.

(74) "Storm water" or "wastewater collection system" means piping, pumps, conduits and any other equipment necessary to collect and transport the flow of surface water run off resulting from precipitation or domestic, commercial or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

(75) "Supervisor" means an individual licensed by the department to direct and oversee specific UST services.

(76) "Surface impoundment" means a natural topographic depression, human-made excavation or diked area formed primarily of earthen materials (although it may be lined with human-made materials) that is not an injection well.

(77) "Suspected release" has the same meaning as described in OAR 340-150-0500(1).

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(78) "Tank" means a stationary device designed to contain an accumulation of regulated substances and is constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

(79) "Tank tightness testing" means a method used to determine if an UST is leaking and is used to supplement another release detection method (such as inventory control or manual tank gauging) and to verify a suspected release when another method indicates a failure.

(80) "Temporary closure" means a halt in operation activities of an UST system for a limited time where the UST system will be brought back into operation or permanently decommissioned at some future date. For example, an UST may be temporarily closed due to corrective action activities on site, abandonment by the owner and permittee, bankruptcy proceedings, failure to maintain a financial responsibility mechanism, sale in progress or for any other reason that a permittee may choose to stop operating the UST. The term applies to an UST system that meets the definition of "temporary closure" whether or not the department has issued a registration certificate for this activity to the owner and permittee.

(81) "Testing" means applying a method to determine the integrity or operational status of any part of an UST system.

(82) "Third party evaluation" means an evaluation of a method or system including, but not limited to, a release detection system or tank integrity assessment method that is conducted by an independent organization. The evaluation includes certification that the method evaluated will operate as designed and includes information about any limitations of the method. As used in this definition, "independent" means that the organization that conducted the evaluation may not be owned, controlled by or associated with any client, industry organization or any other institution with a financial interest in the method or system evaluated.

(83) "Under-Dispenser Containment" means containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or groundwater. Such containment must:

- (a) Be liquid-tight on its sides, bottom, and at any penetrations;
- (b) Be compatible with the substance conveyed by the piping; and
- (c) Allow for visual inspection and access to the components in the containment system, be monitored, or both.

(84) "Underground area" means an underground room, such as a basement, cellar, shaft or vault that provides enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

(85) "Underground piping" means connected piping that is located beneath the ground surface or otherwise covered by earthen materials.

(86) "Underground storage tank" or "UST" means any one or combination of tanks (including connected underground pipes) that contains or used to contain a regulated substance and the volume of which (including the volume of connected underground pipes) is 10 percent or more beneath the ground surface or otherwise covered by earthen materials.

(87) "UST facility" means the real property on which an UST is installed or will be installed. An UST facility encompasses all contiguous real property owned by the same property owner that is associated with the operation of the UST system.

(88) "UST services" includes without limitation, installation, decommissioning, modification, testing (e.g., cathodic protection and tank tightness) and inspection of UST systems.

(89) "UST system" means an underground storage tank, underground piping, underground ancillary equipment and containment system, if any.

(90) "UST system operator" means the individual designated by the owner and permittee as having control of or responsibility for the operation of an UST system, including the on-site operation and maintenance of the system in a manner to ensure that the UST system is in compliance with applicable state and federal regulations and industry standards.

(91) "Wastewater treatment tank" means a tank that is designed to receive and treat influent wastewater through physical, chemical or biological methods.

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

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.706 & 466.746

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 3-1989, f. & cert. ef. 3-10-89; DEQ 21-1989(Temp), f. & cert. ef. 9-18-89; DEQ 10-1990, f. & cert. ef. 3-13-90; DEQ 20-1990, f. & cert. ef. 6-7-90; DEQ 24-1998, f. & cert. ef. 11-2-98; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 8-2003(Temp), f. & cert. ef. 5-21-03 thru 11-14-03; DEQ 16-2003, f. 11-10-03 cert. ef. 11-15-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0020

UST General Permit Registration Certificate Required

(1) A person may not install, operate or close an UST without applying for and being issued a general permit registration certificate from the department for one of the following actions:

- (a) Installation;
- (b) Operation;
- (c) Decommissioning, including permanent closure by change-in-service, removal or filling in-place; or
- (d) Temporary closure.

(2) An owner or proposed permittee must apply for a registration certificate at least 30 days before installing, operating or decommissioning an unregistered UST. The application must include, but is not limited to, the following information and attachments:

(a) The legal name, signature and mailing address of the owner of the UST;

(b) The legal name, signature and mailing address of the owner of the real property on which the UST system is located;

(c) The legal name, signature and mailing address of the permittee.

(A) If the person designated as the permittee is a corporation, a natural person must be identified as the contact person.

(B) If a permittee is not designated, the owner is the permittee.

(d) A completed EPA Notification for Underground Storage Tanks or equivalent form developed by the department; and

(e) A signed statement by the owner or proposed permittee that the owner or permittee (must identify which one) will comply with the financial responsibility requirements of OAR chapter 340, division 151 before operation of the UST system.

(3) The owner or proposed permittee must include the appropriate registration fee with the application in accordance with OAR 340-150-0110(1) for an installation certificate for new USTs to be installed or 340-150-0110(6) for an operation or decommissioning certificate for USTs that should have been registered previously.

(4) An application that is incomplete, unsigned or that does not include the required attachments or fees will be returned to the owner or proposed permittee for completion. The application will be considered to be withdrawn if the required information is not submitted within 90 days of the date that the application was returned by the department.

(5) If the department determines that a general permit is not required, the owner and proposed permittee will be notified in writing and any fees submitted will be refunded. This notification constitutes final action by the department on the application.

(6) When an application is determined to be complete, the UST facility and each individual UST will be assigned a unique identification number (i.e., UST facility ID number and tank permit number) by the department.

(7) A general permit registration certificate is issued to the permittee for each UST facility. In all cases, the permittee must comply with the general permit requirements whether or not an actual registration certificate is issued.

(8) For the purpose of this rule only, the term "legal name" means the business name registered with the Oregon Secretary of State's Office, Corporation Division (if registered) or full name of an individual.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.760

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 20-1990, f. & cert. ef. 6-7-90; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 24-1998, f. & cert. ef. 11-2-98; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0021

Termination of Temporary Permits

Any owner or permittee holding a temporary permit to operate an UST on or before December 22, 1998, who was not issued an operation certificate by the department by December 23, 1998, must apply for a general permit for temporary closure pursuant to OAR 340-150-0167 or decommission the UST under a general permit for permanent closure or change-in-service pursuant to OAR 340-150-0166 and 340-150-0168.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746, 466.750, 466.760 & 466.765

Hist.: DEQ 24-1998, f. & cert. ef. 11-2-98; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

ADMINISTRATIVE RULES

340-150-0052

Modification of Registration Certificates For Changes in Ownership and Permittee

(1) A new owner or proposed new permittee must submit an application to modify the UST general permit registration certificate if any of the following occur:

(a) Change of ownership of property on which an UST system is located;

- (b) Change in UST ownership; or
(c) Change in the designated permittee.

(2) The modification application must be signed by the owner, permittee and property owner. The new owner or proposed permittee must submit an application to the department promptly upon confirmation that the change has been legally documented (i.e., property sale is complete). Failure to submit the required modification application will result in termination of the general permit registration certificate 60 days after the change in accordance with OAR 340-150-0102(1).

(3) The modification application must include a copy of the financial assurance mechanism (e.g., insurance certificate or endorsement, trust fund, etc.) that demonstrates compliance with the requirements of OAR chapter 340, division 151.

(4) A \$75 general permit modification fee must accompany the modification application. Checks or money orders must be payable to the Department of Environmental Quality.

(5) A new *operation certificate* will be issued to the permittee upon receipt of all required information and payment of the fee.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746, 466.760, 466.765 & 466.783

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0102

Termination of General Permit Registration Certificates for Installation, Operation and Temporary Closure

(1) A general permit registration certificate will automatically terminate 60 days after any of the changes set forth in OAR 340-150-0052(1) have occurred, unless the department has received an application for modification by that date.

(2) A registration certificate for installation will automatically terminate when the department issues a registration certificate for operation.

(3) A registration certificate for operation will automatically terminate:

(a) When the department issues a registration certificate for temporary closure;

(b) On the date that temporary closure occurred or is discovered by the department if a registration certificate for temporary closure has not been issued; or

(c) On the date change-in-service or permanent closure begins.

(4) A temporary closure certificate will automatically terminate upon completion of all change-in-service or permanent closure requirements or if the UST system is returned to operational status (OAR 340-150-0167(2)(b)).

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.760

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0110

UST General Permit Registration, Annual Compliance and Other Fees

(1) An owner and permittee must pay a \$400 installation fee for each UST or UST compartment installed and the general permit registration fee for each tank. This fee must accompany the application for a UST general permit registration certificate. The registration fee is the same amount as the annual compliance fee listed in section (2) of this rule.

(2) Each calendar year (January 1 to December 31) following installation, the owner and permittee must pay an annual compliance fee for each UST that has not been permanently decommissioned, for any portion of the year, according to the following schedule:

- (a) \$25 per tank for the years 1988, 1989, 1990, 1991, 1992 and 1993;
(b) \$35 per tank for the years 1994, 1995, 1996 and 1997;

(c) \$60 per tank for the years 1998, 1999, 2000 and 2001, except that for 1998 and 1999 the fee is \$35 for any permittee that self-certifies its compliance with 1998 technical standards to the department;

(d) \$105 per tank for 2002, which includes a \$20 surcharge per tank;

(e) \$85 per tank for the years 2003, 2004, 2005, 2006 and 2007; and

(f) \$135 per tank for 2008 and subsequent years.

(3) For multichambered or multicompartmented USTs, the general permit registration fee and annual compliance fee must be paid for each chamber or compartment.

(4) The department will issue an invoice to each permittee for the annual compliance fees due for each UST facility for each calendar year. The permittee must pay fees by the due date listed on the invoice. A \$35 late fee will be added to the total amount due for each invoice for which payment is not received by the due date. At its discretion, the department may allow the permittee to make alternative arrangements for payment.

(5) Each year following installation, an annual operation certificate that identifies the underground storage tank(s) at the facility that are eligible for delivery, deposit or acceptance of a regulated substance will be issued to the permittee provided the department has received:

(a) Proof of compliance with financial responsibility requirements in OAR chapter 340, division 151;

(b) Payment of UST fees due under OAR chapter 340, division 150; and

(c) Payment of any civil penalty due pursuant to an order issued under ORS 466.706 to 466.882 or ORS 466.994 that is final either upon appeal or by operation of law.

(6) For any UST that was not permitted by May 1, 1988, or that was not permitted before installation during any year thereafter, the owner and permittee must pay the annual compliance fee for each calendar year or part of a calendar year since installation, except that the total amount of fees owed will not be more than \$500 per tank. These fees must be paid before the department will approve a 30-day or 3-day notice to decommission the UST.

(7) All checks or money orders for fees must be made payable to the Department of Environmental Quality.

Stat. Auth.: ORS 466.706-835, 466.994, 466.995 & Ch. 767, OL 1997

Stats. Implemented: ORS 466.783 & 466.785

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 20-1989(Temp), f. & cert. ef. 8-1-89 (and corrected 8-3-89); DEQ 34-1989, f. & cert. ef. 12-14-89; DEQ 20-1990, f. & cert. ef. 6-7-90; DEQ 7-1994, f. & cert. ef. 3-22-94; DEQ 24-1998, f. & cert. ef. 11-2-98; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0135

General Requirements for Owners and Permittees

(1) An owner and permittee must comply with the UST operator training requirements in OAR 340-150-0200 or 340-150-0210, as applicable.

(2) The property owner, UST owner and permittee must allow any department employee or authorized representative of the department access to property where an UST is located at any reasonable time to interview persons, inspect equipment and site conditions, collect samples, take still or video pictures, conduct an investigation or review and copy records.

(3) An owner and permittee of a petroleum UST system subject to this division must continuously comply with the financial responsibility requirements of OAR chapter 340, division 151.

(4) An owner and permittee must provide information regarding an UST system, UST facility or UST system operator to the department upon request.

(5) An owner and permittee must notify the department at least 30 days before any of the following:

(a) A change in contents of an UST as listed on the operation certificate from one regulated substance to another (e.g., gasoline to diesel).

(b) A change in the name of the contact person for the permittee, if the permittee has not changed.

(c) A change in the mailing address or phone number of the property owner, owner or permittee.

(6) Upon receipt of any information submitted in accordance with section (5) of this rule, the department may issue a modified operation certificate or a temporary closure certificate. The \$75 registration certificate modification fee is not applicable to the changes described in this subsection.

(7) An owner and permittee of an UST system subject to this division must also comply with the following release reporting, site investigation and corrective action requirements:

(a) OAR 340-122-0205 through 340-122-0360 for petroleum USTs.

(b) OAR 340-122-0010 through 340-122-0115 for USTs containing nonpetroleum regulated substances, except that any releases must be reported in accordance with the requirements of OAR chapter 340, division 142.

(8) In addition to any other requirements of this division, an owner and permittee must decommission any UST system that does not meet the requirements of this division in accordance with the general permit registration requirements for permanent closure (OAR 340-150-0166 or 340-150-0168).

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(9) Any notification made to the department by an owner and permittee may be made in writing sent by U.S. mail, electronic mail, facsimile or verbally by telephone provided it is received by the department by the required due date, unless otherwise specified by rule.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746, 466.765, 466.805 & 466.815

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0150

Depositing Regulated Substances in USTs

(1) No person shall allow delivery, deposit, cause to be deposited or accept deposit of a regulated substance into an UST unless the owner and permittee of the UST facility have a valid annual operation certificate for the UST posted in a conspicuous location at the facility clearly visible to distributors depositing regulated substances into the UST.

(2) Before arranging for delivery of a regulated substance, an owner and permittee must provide the operation certificate number and the identification number for each UST to any person depositing a regulated substance into the UST.

(3) If a general permit registration certificate is revoked, suspended or terminated, an owner and permittee must return the operation certificate to the department.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.760

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 3-1989, f. & cert. ef. 3-10-89; DEQ 24-1998, f. & cert. ef. 11-2-98; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0152

Requirements for Distributors of Regulated Substances for Deposit into USTs

(1) Each distributor must obtain and maintain a written record of operation certificate numbers for every UST facility and the identification number for each UST into which it delivers or deposits a regulated substance.

(2) A distributor may not deliver or deposit a regulated substance into an UST unless a valid operation certificate for the UST is posted in a conspicuous location at the UST facility clearly visible to those depositing regulated substances into the UST.

(3) Upon request by the department, a distributor must provide a written record of all USTs into which it delivered or deposited a regulated substance during the past three years, regardless of whether the UST is registered with or regulated by the department. The list must include, but is not limited to, customer name, delivery address, operation certificate number (as applicable), UST identification number, type of regulated substance delivered and delivery date.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0160

General Permit Requirements for Installing an UST System

(1) To maintain compliance with a general permit installation certificate, the permittee must:

(a) Install all UST system components and ancillary equipment in accordance with the following performance standards and requirements:

(A) For installation of USTs and underground piping, OAR 340-150-0300 and 340-150-0302;

(B) Install under-dispenser containment for each new, moved or replaced fuel dispenser system. This rule does not apply to repairs of a dispenser system;

(C) For spill and overflow protection, OAR 340-150-0310;

(D) For corrosion protection, OAR 340-150-0320 and 340-150-0325; and

(E) For release detection, OAR 340-150-0400 through 340-150-0470.

(b) Allow the department access to the UST facility and records (OAR 340-150-0135(2));

(c) Provide information to the department upon request and submit information regarding UST system or UST facility changes (OAR 340-150-0135(4) and (5)); and

(d) Comply with all installation notification and written report requirements (OAR 340-150-0300).

(2) Except as provided by OAR 340-150-0156, all UST installation services must be performed under the supervision of a person licensed as a DEQ UST services supervisor who is working for a company licensed as a DEQ UST services service provider in accordance with OAR chapter 340, division 160.

(3) Notwithstanding OAR 340-150-0150(1), the department may, at its discretion, approve the deposit of a regulated substance into the UST before the issuance of an operation certificate on a case by case basis. Dispensing of a regulated substance from the UST is strictly prohibited. Following approval by the department, the permittee must:

(a) Provide the distributor of the regulated substance with the installation certificate number and UST identification number for each tank, including an explanation that the certificate number will be superseded by an operation certificate number (OAR 340-150-0150(2));

(b) Report, investigate and perform corrective action for any confirmed release of a regulated substance (OAR 340-150-0135(7)); and

(c) Provide proof of compliance with the financial responsibility requirements of OAR chapter 340, division 151 to the department before accepting delivery of petroleum (OAR 340-150-0135(3)).

(4) The UST system installation will be considered complete upon final review and approval by the department of the completed installation checklist and certification of compliance signed by the owner, permittee and service provider (i.e., the tank installer) as required by OAR 340-150-0300(9). An operation certificate will be issued to the permittee once the installation has been approved by the department.

(5) The general permit registration certificate for installation automatically expires upon issuance of a general permit registration certificate for operation (OAR 340-150-0102(2)).

Stat. Auth.: ORS 466.706 - 466.995

Stats. Implemented: ORS 466.706, 466.740, 466.746, 466.750, 466.760, 466.765, 466.770, 466.783, 466.775, 466.785, 466.800, 466.805, 466.810 & 466.815

Hist.: DEQ 24-1998, f. & cert. ef. 11-2-98; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0163

General Permit Requirements for Operating an UST System

(1) To maintain compliance with the general permit registration certificate for operation, the permittee must operate and maintain the UST system in accordance with the following performance standards and requirements:

(a) The valid annual operation certificate must be posted in a conspicuous location at the UST facility clearly visible to distributors depositing regulated substances into the UST (OAR 340-150-0150);

(b) Prevent spills and overfills (OAR 340-150-0310);

(c) Maintain corrosion protection, including testing, record keeping and reporting of test failures (OAR 340-150-0320 and 340-150-0325);

(d) Perform release detection for USTs and underground piping, including monitoring, testing and record keeping (OAR 340-150-0400 through 340-150-0470);

(e) Periodically inspect internally lined USTs and report to the department any inspection failures (OAR 340-150-0360);

(f) Report to the department any suspected release of regulated substances within 24 hours (OAR 340-150-0500) and investigate suspected releases within seven days (340-150-0510);

(g) Report to the department any spills, overfills or confirmed releases within 24 hours and investigate or take corrective action as required by:

(A) OAR 340-122-0205 through 340-122-0360 for petroleum USTs.

(B) OAR 340-122-0010 through 340-122-0115 for USTs containing nonpetroleum regulated substances, except that releases must be reported in accordance with the requirements of OAR chapter 340, division 142.

(h) Repair, modify or replace UST system components as necessary to correct, detect or prevent releases (OAR 340-150-0350 through 340-150-0354);

(i) Continuously maintain a financial responsibility mechanism for petroleum UST systems (OAR chapter 340, division 151);

(j) Allow the department access to the UST facility and records (OAR 340-150-0135(2));

(k) Provide information to the department upon request and submit information regarding UST system or UST facility changes (OAR 340-150-0135(4) and (5));

(l) Pay all annual compliance fee invoices by the specified due date or be subject to late fees (OAR 340-150-0110);

(m) Submit application for modification of registration certificate to the department upon any change in ownership of the property, UST system or designated permittee (OAR 340-150-0052). Failure to submit a request for modification is cause for automatic termination of the operation certificate (OAR 340-150-0102(1)); and

(n) Comply with all applicable UST operator training requirements (OAR 340-150-0200 or 340-150-0210).

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(2) Except as provided by OAR 340-150-0156, all UST services shall be performed under the supervision of a person licensed as a DEQ UST services supervisor who is working for a company licensed as a DEQ UST services service provider in accordance with OAR chapter 340, division 160.(

(3) The permittee may not operate an UST that does not meet the conditions and requirements of the operation certificate and all other applicable rules and statutes. The permittee must:

(a) Immediately take all actions necessary to bring the UST system into compliance; or

(b) Submit a 30-day notice of permanent closure to the department and immediately begin to manage the UST system in compliance with the conditions and requirements of a general permit for permanent closure in accordance with OAR 340-150-0166 or 340-150-0168.

(4) When an UST system will no longer be operated due to proposed change-in-service, temporary or permanent closure, the permittee must notify the department of the proposal in writing 30 days in advance of the change.

(5) The operation certificate for an UST will terminate upon issuance of a temporary closure certificate or when temporary closure, change-in-service or permanent closure begins (OAR 340-150-0102(3)).

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats Implemented: ORS 466.706, 466.740, 466.746, 466.750, 466.760, 466.765, 466.770, 466.775, 466.783, 466.785, 466.805, 466.810 & 466.815

Hist.: DEQ 24-1998, f. & cert. ef. 11-2-98; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0166

General Permit Requirements for Closure of an UST System by Change-in-Service

(1) An UST system may be used to store a nonregulated substance without removal of the tank (i.e., change-in-service), except that an UST or any underground piping that has held a regulated substance may not be used under any circumstances to store water for consumption by humans or livestock or for the watering of feed crops.

(2) At least 30 days before beginning the change-in-service, the permittee must submit an application for a change-in-service general permit to the department. The department may allow a shorter notice period on a case by case basis. In addition to general information about the UST facility, tank ownership and UST system, the application must include:

(a) Information about the proposed use of the UST system;

(b) A written site assessment plan that meets the requirements of OAR 340-150-0180; and

(c) Any other information the department may require.

(3) After approval of the site assessment plan by the department and at least three working days before beginning the change-in-service, the permittee must notify the department of the confirmed date and time the change-in-service will begin to allow observation by the department.

(4) A general permit registration certificate will not be issued. The permittee must, however, comply with the requirements of the general permit for decommissioning by change-in-service. In addition to all other requirements of this rule, the permittee must:

(a) Report to the department any spills, overfills or confirmed releases within 24 hours and investigate or take corrective action as required by:

(A) OAR 340-122-0205 through 340-122-0360 for petroleum USTs.

(B) OAR 340-122-0010 through 340-122-0115 for USTs containing nonpetroleum regulated substances, except that releases must be reported in accordance with the requirements of OAR chapter 340, division 142.

(b) Continuously maintain a financial responsibility mechanism for petroleum UST systems required by OAR chapter 340, division 151, until the department has determined that the change-in-service is complete;

(c) Allow the department access to the UST facility and records (OAR 340-150-0135(2));

(d) Provide information to the department upon request and submit information regarding UST system or UST facility changes (OAR 340-150-0135(4) and (5)); and

(e) Pay all annual compliance fees when due and any applicable late fees (OAR 340-150-0110).

(4) Except as provided by OAR 340-150-0156, all UST services shall be performed under the supervision of a person licensed as a DEQ UST services supervisor who is working for a company licensed as a DEQ UST services service provider in accordance with OAR chapter 340, division 160.

(5) The permittee must empty the UST system and clean it by removing all liquids and accumulated sludge. The USTs and removed materials must be recycled or disposed of in accordance with all federal, state and

local requirements. One or more of the following cleaning and closure procedures must be used:

(a) American Petroleum Institute RP 1604, "Closure of Underground Petroleum Storage Tanks";

(b) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";

(c) American Petroleum Institute RP 1631, "Interior Lining of Underground Storage Tanks" (contains guidance information); or

(d) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard: Working in Confined Space" (Publication No. 80-106) (guidance for conducting safe closure procedures at some hazardous substance USTs).

(6) Within 30 days of completion of the field work or other period approved by the department, the permittee must complete and submit a change-in-service checklist and site assessment report (OAR 340-150-0180(8)) signed by the owner, permittee and service provider to the department.

(7) The UST system change-in-service will be considered complete upon final review and approval by the department of the completed change-in-service checklist and site assessment report. The department will provide a letter to the permittee indicating that the change-in-service has been completed.

(8) The permittee must maintain records of change-in-service, including the site assessment report and associated documents, for three years after the change-in-service checklist and report have been approved by the department. If the UST facility is sold within this time period the permittee must provide these records to the new property owner (OAR 340-150-0140).

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

Stat. Auth.: ORS 466.706 - 466.995 & 465.200 - 465.990

Stats Implemented: ORS 465.200, 465.210, 465.255, 465.260, 466.706, 466.710, 466.740, 466.746, 466.750, 466.760, 466.765, 466.770, 466.775, 466.785, 466.800, 466.805, 466.810 & 466.815

Hist.: DEQ 24-1998, f. & cert. ef. 11-2-98; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0167

General Permit Requirements for Temporary Closure of an UST System

(1) At least 30 days before beginning temporary closure, the owner and permittee must submit an application for a temporary closure general permit to the department. The department may allow a shorter notice period on a case by case basis.

(2) A temporary closure certificate will expire one year from the date of issuance. At least thirty days before the expiration date, the permittee must submit one of the following to the department:

(a) An application for a change-in-service (OAR 340-150-0166) or permanent closure (340-150-0168) general permit;

(b) A written request to return the UST system to operational status; or

(c) A written request to extend the expiration date of the temporary closure certificate.

(A) Requests to extend the temporary closure certificate will be considered by the department only if all USTs identified under the initial temporary closure certificate are empty of all regulated substances and a site assessment (OAR 340-150-0180) has been conducted to determine if a release has occurred. In lieu of a site assessment, the department may accept other documentation that indicates no release has occurred. If the department approves the request for extension, the expiration date will be extended to a date determined by the department and a revised temporary closure certificate will be issued to the permittee.

(B) If the department denies the request, the permittee must decommission the UST system by permanent closure or change-in-service by the date established by the department. The department will notify the permittee of the denial in writing and include the reasons the request was denied.

(3) To maintain compliance with the general permit temporary closure certificate, the permittee must:

(a) Cap and secure all lines, pumps, access-ways and ancillary equipment, except the vent lines, if the UST system is temporarily closed for three months or more;

(b) Report suspected releases of regulated substances to the department within 24 hours (OAR 340-150-0500) and investigate suspected releases within seven days (340-150-0510);

(c) Report to the department any confirmed releases within 24 hours and investigate or take corrective action as required by:

(A) OAR 340-122-0205 through 340-122-0360 for petroleum USTs.

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(B) OAR 340-122-0010 through 340-122-0115 for USTs containing nonpetroleum regulated substances, except that releases must be reported in accordance with the requirements of OAR chapter 340, division 142.

(d) Continuously maintain a financial responsibility mechanism for petroleum UST systems (OAR chapter 340, division 151);

(e) Allow the department access to the UST facility and records (OAR 340-150-0135(2));

(f) Provide information to the department upon request and submit information regarding UST system or UST facility changes (OAR 340-150-0135(4) and (5));

(g) Pay all annual compliance fees when due and any applicable late fees (OAR 340-150-0110); and

(h) Report to the department any change in ownership of property, UST system or designated permittee (OAR 340-150-0052).

(4) Except as provided by OAR 340-150-0156, all UST services shall be performed under the supervision of a person licensed as a DEQ UST services supervisor who is working for a company licensed as a DEQ UST services service provider in accordance with OAR chapter 340, division 160.

(5) If the UST is empty of all regulated substances, the permittee must comply with the requirements of section (3) of this rule and must submit documentation to the department that the tank was emptied and that the removed regulated substance and sludge was recycled or disposed of in accordance with state, federal and local regulations. This documentation must be submitted with the notice provided to the department (OAR 340-150-0167(1) or within 30 days after the tank has been emptied.

(6) If the UST is not empty, the permittee must comply with the requirements of section (3) of this rule and perform release detection for USTs and underground piping, including monitoring, testing and record keeping in accordance with OAR 340-150-0400 through 340-150-0470.

(7) If the UST and underground piping are metal, the permittee must operate, test and maintain equipment and keep records for corrosion protection in accordance with OAR 340-150-0320 and 340-150-0325.

(8) If the UST is lined, the permittee must periodically inspect the lining in accordance with OAR 340-150-0360.

(9) When necessary to correct, detect or prevent releases, the permittee must repair, modify or replace UST system components (OAR 340-150-0350 through 340-150-0354).

(10) The permittee must maintain all records related to the temporary closure for three years after a change-in-service or permanent closure checklist and site assessment report have been approved by the department. If the UST facility is sold within this time period, the permittee must provide these records to the new property owner (OAR 340-150-0140).

Stat. Auth.: ORS 465.200-455 & 466.706-835, 466.994 & 466.995

Stats. Implemented: ORS 465.205, 465.400, 466.706, 466.740, 466.746, 466.750, 466.760, 466.765, 466.770, 466.775, 466.783, 466.785, 466.785, 466.805, 466.810 & 466.815

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0168

General Permit Requirements for Decommissioning an UST System by Permanent Closure

(1) At least 30 days before beginning permanent closure, the owner and permittee, or the licensed service provider on behalf of the owner and permittee, must submit an application for a permanent closure general permit to the department. The department may allow a shorter notice period on a case by case basis.

(2) If the owner or permittee is proposing to permanently close the UST in-place and fill it with an inert material or if the UST contains a hazardous substance other than petroleum, the application must include a written site assessment plan that meets the requirements of OAR 340-150-0180. Permanent closure cannot begin until the department approves the site assessment plan.

(3) At least three working days before beginning permanent closure, the owner and permittee, or the licensed service provider on behalf of the owner and permittee, must notify the department of the confirmed date and time permanent closure will begin to allow observation by the department.

(4) The permittee must empty the UST system and clean it by removing all liquids and accumulated sludge. The USTs and removed materials must be recycled or disposed of in accordance with all federal, state and local requirements. One or more of the following cleaning and closure procedures must be used:

(a) American Petroleum Institute RP 1604, "Closure of Underground Petroleum Storage Tanks";

(b) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";

(c) American Petroleum Institute RP 1631, "Interior Lining of Underground Storage Tanks" (contains guidance information); or

(d) The National Institute for Occupational Safety and Health (NIOSH) "Criteria for a Recommended Standard: Working in Confined Space" (Publication No. 80-106) (guidance for conducting safe closure procedures at some hazardous substance USTs).

(5) The permittee must perform a site assessment that meets the requirements of OAR 340-150-0180 after the UST system and all ancillary equipment have been removed from the tank pit. If the UST is closed in-place, the site assessment must be conducted in accordance with the approved site assessment plan. If any equipment (i.e., tanks or piping) are to be disposed of instead of recycled, the disposal location must be approved in advance in writing by the department.

(6) Within 30 days of completion of the field work or other period approved by the department, the permittee must complete and submit to the department a permanent closure checklist and site assessment report (OAR 340-150-0180) signed by the owner, permittee and service provider to the department.

(7) A general permit registration certificate will not be issued to the permittee. However, the permittee must comply with the requirements of this general permit for permanent closure. In addition to all other requirements of this rule, the permittee must:

(a) Report to the department any spills or confirmed releases within 24 hours and investigate or take corrective action as required by:

(A) OAR 340-122-0205 through 340-122-0360 for petroleum USTs.

(B) OAR 340-122-0010 through 340-122-0115 for USTs containing nonpetroleum regulated substances, except that releases must be reported in accordance with the requirements of OAR chapter 340, division 142.

(b) Continuously maintain a financial responsibility mechanism for petroleum UST systems (OAR chapter 340, division 151);

(c) Allow the department access to the UST facility and records (OAR 340-150-0135(2));

(d) Provide information to the department upon request and submit information regarding UST system or UST facility changes (OAR 340-150-0135(4) and (5));

(e) Pay all annual compliance fees when due and any applicable late fees (OAR 340-150-0110).

(8) Except as provided by OAR 340-150-0156, all UST services shall be performed under the supervision of a person licensed as a DEQ UST services supervisor who is working for a company licensed as a DEQ UST services service provider in accordance with OAR chapter 340, division 160.

(9) The UST system permanent closure will be considered complete upon approval by the department of the completed permanent closure checklist and site assessment report (OAR 340-150-0180). The department will provide a letter to the permittee indicating that the permanent closure has been completed.

(10) The permittee must maintain records of permanent closure, including the site assessment report and associated documents, for three years after the permanent closure checklist and report have been approved. If the UST facility is sold within this time period the permittee must provide these records to the new property owner (OAR 340-150-0140).

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 465.200-455 & 466.706-835, 466.994 & 466.995

Stats. Implemented: ORS 465.205, 465.400, 466.706, 466.740, 466.746, 466.750, 466.760, 466.765, 466.770, 466.775, 466.783, 466.785, 466.805, 466.810 & 466.815

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0180

Site Assessment Requirements for Permanent Closure or Change-In-Service

(1) An owner and permittee must complete a site assessment to measure for the presence of a release where contamination is most likely to be present at the UST facility and submit results of the assessment to the department when the following events occur:

(a) Change-in-service (OAR 340-150-0166);

(b) Permanent Closure (OAR 340-150-0168);

(c) Request for Extension of Temporary Closure Certificate (OAR 340-150-0167(2)(c)(A))

(d) Underground piping is replaced, decommissioned by removal or abandoned; and

(e) Fuel dispensers are moved, replaced, decommissioned or abandoned.

(2) In selecting sample types, sample locations and measurement methods, an owner and permittee must consider the method of closure, the

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nature of the stored substance, the type of backfill, the depth to groundwater and other factors appropriate for identifying the presence of a release.

(3) For USTs containing petroleum, the owner and permittee must measure for the presence of a release by following the sampling and analytical procedures specified in OAR 340-122-0205 through 340-122-0360 and section (5) of this rule.

(4) For USTs containing regulated substances other than petroleum (including waste oil tanks), petroleum USTs to be closed in-place and USTs to undergo a change-in-service, an owner and permittee must submit a written site assessment plan (i.e., sampling plan) to the department and receive department approval before beginning permanent closure or change-in-service. The plan must include the following information:

(a) A site diagram, drawn to scale, that identifies:

(A) The location of all USTs and underground piping, dispenser islands, buildings and nearby properties;

(B) All surface water bodies within 1/4 mile of the UST facility;

(C) Any potential conduits for spreading contamination that may exist (e.g., water or sewer lines); and

(D) All proposed sample locations, clearly marked.

(b) A list of analytical procedures and sample collection methods to be used;

(c) General information about the sample collector and UST facility;

(d) The location of all proposed sampling points that meet the requirements of section (5) of this rule; and

(e) Any other information as specified by the department.

(5) Unless otherwise directed or approved by the department, an owner and permittee must meet the following requirements for sampling and analysis:

(a) Soil samples must be collected from the native soils located no more than two feet beneath the bottom of the tank pit in areas where contamination is most likely to be found;

(b) For in-place closure or change-in-service of an UST, a minimum of four soil samples must be collected, one each from beneath both ends of the tank and on each side;

(c) For the removal of a single tank, two to four soil samples must be collected as appropriate based on site conditions, including the condition of the removed tank;

(d) For the removal of multiple USTs from the same pit, in addition to subsection (c) of this section, one soil sample must be collected for each 100 square feet of area in the pit from areas where contamination is most likely to be found;

(e) For underground piping:

(A) For piping runs between 5 and 20 feet, a minimum of two soil samples must be collected from the native soils directly beneath the areas where contamination is most likely to be found, unless otherwise approved by the department; and

(B) For piping runs of more than 20 feet in length, beginning at the dispensers, at least one additional soil sample must be collected at each 20-foot interval;

(f) For dispensers, at least one soil sample must be collected from the native soils directly beneath each dispenser;

(g) For UST components (e.g., underground piping or dispensers) located directly above an area to be excavated, the area must be visually assessed before excavation work is conducted and soil samples collected if contamination is observed or suspected;

(h) All soil samples must be analyzed by the Northwest Total petroleum Hydrocarbon Identification Analytical Method (NWTPH-HCID, DEQ, December 1996) test specified in OAR 340-122-0218(1)(d)(A) to determine if a confirmed petroleum release exists; and

(i) If water is present in the UST pit, regardless of whether obvious contamination is present, the department must be notified within 24 hours of discovery.

(6) The guidance contained in Appendix K of this division may be used to comply with sections (4) and (5) of this rule.

(7) An owner and permittee must report a confirmed release to the department within 24 hours of confirmation whether by observance or receipt of analytical results. Upon discovery of a release, an owner and permittee must:

(a) Immediately initiate corrective action. An owner and permittee may request and the department may approve a specific time schedule to initiate corrective action on a case by case basis depending on the severity of the contamination or other relevant factors; and

(b) Follow the requirements of OAR 340-122-0225 for "Initial Abatement and Site Check" and 340-122-0235 for "Free Product Removal" as appropriate.

(8) An owner and permittee must submit a written report of the results of the site assessment to the department within 30 days of completion of the field work or other period approved by the department.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.765

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0200

Training Requirements for UST System Operators and Emergency Response Information

(1) This rule is effective through August 7, 2009, after which it is superseded by the provisions of OAR 340-150-0210 (except to the extent expressly incorporated into that rule).

(2) The owner and permittee of each UST facility that dispenses a regulated substance from an UST to a motor vehicle or container must:

(a) Employ trained personnel who can properly operate and maintain the UST system; and

(b) Provide emergency response information to any person that dispenses a regulated substance from the UST system.

(3) UST system operator. An owner and permittee must require that the designated UST system operator complete training within 90 days of designation, unless the individual has previously completed a training option and a copy of the training documentation is maintained at the UST facility.

(4) Elements of required training.

(a) All training options must include the essential training elements listed in Appendix L of this division and as further described in an UST system operator training manual developed by the department; and

(b) The department may periodically audit or review any of the training options to verify that the training follows the department's training manual.

(5) Training options. The UST system operator must either:

(a) Attend a training session sponsored by a training vendor listed by the department. A training vendor is a person, company or organization listed by the department that has agreed to present UST system operator training using the training manual developed by the department;

(b) Successfully pass an examination designed for UST system operators offered by a national service and approved by the department;

(c) Complete an internet or computer software training or examination program approved by the department; or

(d) Complete any other equivalent training method approved by the department.

(6) Documentation and record keeping. An owner and permittee must submit verification of UST system operator training completion to the department on or after March 1, 2004.

(a) Verification may include a copy of the certificate of training completion signed by the UST system operator along with any examination results or a list of persons who attend a training session as submitted by the training vendor. The list must include: the UST system operator's name and signature; the date training was completed; and the name, site address and the department's UST facility identification number for the UST facility that the UST system operator serves. The list must also include a confirmation statement by the training vendor that the training session was conducted using the department's UST system operator training manual.

(b) An owner and permittee must permanently retain each certificate of completion signed by the UST system operator on file at the UST facility, including a copy of any examination results. If training records are not kept at the UST facility, an owner and permittee must have the records available for review by the department upon request.

(7) Exemption or deferral from training. The department may exempt an owner and permittee from the training requirements for an UST system operator if an owner and permittee demonstrates to the department's satisfaction that a hardship condition exists. Additionally, the department may defer the compliance date for UST system operator training to an alternate date on a case-by-case basis for an owner and permittee who meets the requirements of this section.

(a) To be considered for an UST system operator hardship exemption or deferral, an owner and permittee must demonstrate that the following conditions exist:

(A) The owner and permittee are the same person and owns only one UST facility;

(B) The permittee is both the UST system operator and the only person regularly on site who can operate the UST system equipment; and

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(C) The permittee has been unable to locate another person to operate the UST facility for the permittee for a scheduled training session date or for the amount of time needed to complete a training option.

(b) The permittee must submit a written request for a hardship exemption or deferral to the department. The request must include the following information:

(A) A brief description of how the permittee meets the requirements of subsection (a) of this section; and

(B) A list of available training options and other possible solutions explored by the permittee together with an explanation demonstrating why none of these alternatives are feasible.

(c) The department will review exemption and deferral requests within 60 days of receipt of the completed request. Upon approval by the department, the permittee must review the training manual developed by the department and sign an affidavit stating that the permittee has read and understands the UST operation and maintenance requirements.

(d) The permittee must keep a copy of all records pertaining to approval of a hardship exemption or deferral, including the written request for hardship and signed affidavit. Records must be kept permanently at the UST facility. If records are not kept at the UST facility, the permittee must have the records available for review by the department upon request; and

(e) UST facilities where the permittee has been granted a hardship exemption will be placed on a priority list for technical assistance and inspection by the department.

(8) Emergency response information. In addition to the requirements of sections (1) through (7) of this rule, an owner and permittee must provide information about emergency response procedures to any person who dispenses a regulated substance, including, but not limited to, procedures for overfill protection during delivery of regulated substances, operation of emergency shut off system and alarm response, release reporting and any site specific emergency procedures. The information must include any emergency response requirements made necessary by site specific human health and safety issues or the presence of environmentally sensitive areas, such as nearby streams, wetlands or potential conduits for spreading contamination. The emergency response information must be provided by:

(a) Written instructions that are provided to any person who dispenses a regulated substance at the UST facility;

(b) Signage posted in prominent areas of the UST facility that is easily visible to any person dispensing a regulated substance; or

(c) A combination of both subsections (a) and (b) of this section.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.743 & 466.746

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0210

Training Requirements for UST Operators

(1) On or after August 8, 2009, owners and permittees must comply with the training requirements for UST operators in this rule.

(2) The owner and permittee of each UST facility issued an operation certificate by the department must employ Class A, Class B and Class C operators who can properly operate and maintain the UST system and respond to events indicating emergency conditions or responding to alarms caused by spills or releases from the UST system. The three classes of operators are generally identified in the following table: [Table not included. See ED. NOTE.]

(3) Beginning August 8, 2009, an owner and permittee must designate their Class A, Class B and Class C operators and require that those operators complete training that meets the following requirements:

(a) An individual designated as a Class A or Class B operator must complete one of the training options in section 5 of this rule within 90 days of designation unless the individual has previously completed a training option under OAR 340-150-0200(5) and can provide verification of the training completion consistent with OAR 340-150-0200(6)(a).

(b) An individual designated as a Class C operator must be trained before dispensing a regulated substance or assuming responsibility for responding to emergencies.

(c) An individual who is designated to more than one operator class must be trained in each operator class for which he or she is designated.

(d) Individuals designated as a Class A or Class B operator for a UST facility that fails an UST compliance inspection must repeat one of the training options in section (5) of this rule within 90 days of the UST facility failing the compliance inspection.

(4) All training options for Class A and Class B operators must include the essential training elements listed in Appendix L of this division.

(5) Training options. Class A and Class B operators must either:

(a) Attend a training session sponsored by a training vendor approved by the department. A training vendor is a person, company or organization approved by the department that has agreed to present UST system operator training in accordance with all requirements of this rule;

(b) Successfully pass an examination designed for UST Class A operators or Class B operators, whichever applicable, offered by a national service and approved by the department;

(c) Complete an internet or computer software training or examination program designed for Class A or Class B operators, whichever is applicable, and approved by the department; or

(d) Complete any other equivalent training method approved by the department.

(6) Emergency response information.

(a) Trained Class A or Class B operators must provide training to Class C operators on emergency response procedures, including, but not limited to, procedures for overfill protection during delivery of regulated substances, operation of emergency shut off systems, alarm identification and response, release reporting and any site specific emergency procedures. The information must include any emergency response requirements made necessary by site specific human health and safety issues or the presence of environmentally sensitive areas, such as nearby streams, wetlands or potential conduits for spreading contamination. The emergency response information must be provided by:

(A) Written instruction to any person who is designated a Class C operator at the UST facility; and

(B) Signage posted in prominent areas of the UST facility that is easily visible to any person that is designated as a Class C operator or dispenses a regulated substance.

(7) Documentation and record keeping.

(a) Written verification of training completion for Class A, B and C operators must include: the UST operator's name, the date training was completed, and the name, site address and the department's UST facility identification number for the UST facility that the UST operator serves.

(b) An owner and permittee must permanently retain each certificate of completion on file at the UST facility, including a copy of any examination results. If training records are not kept at the UST facility, an owner and permittee must have the records available for review by the department upon request.

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

Stat. Auth.: ORS 466.706 - 466.835, 466.994, 466.995

Stats. Implemented: ORS 466.743, 466.746

Hist.: DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0250

Expedited Enforcement Process

(1) Nothing in this rule shall affect the department's use of OAR chapter 340, division 12 "Enforcement Procedures and Civil Penalties" for compliance with the UST regulations, except as specifically noted. Nothing in this rule requires the department to use the expedited enforcement process for any particular violation. The field penalty amounts assigned in section (4) of this rule are only applicable to actions taken by the department under this rule.

(2) An owner and permittee is excluded from participation in the expedited enforcement process if:

(a) The total field penalty amount for all violations identified during a single inspection or file review would exceed \$1,500;

(b) The department has issued a field penalty or civil penalty to the owner or permittee for the same violation at the same UST facility within the previous three years; or

(c) At its discretion, the department determines that an owner and permittee is not eligible for the expedited process. This determination will be done on a case by case basis. (One example may be when an owner and permittee of multiple UST facilities has received multiple field citations for the same or similar violations, but has not made corrections at all facilities.)

(3) For any owner and permittee with documented violations or conditions that exclude participation in the expedited enforcement process as provided in section (2) of this rule, the department will take appropriate enforcement action in accordance with OAR chapter 340, division 12.

(4) The following field penalties will be assessed for those documented violations or conditions cited using the expedited enforcement process under this rule, in lieu of the enforcement process in OAR chapter 340, division 12:

(a) A class I UST violation listed in OAR 340-12-0067(1) or 340-12-0053(1): \$150 — \$500;

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(b) A class II UST violation listed in OAR 340-012-0067(2) or 340-12-0053(2): \$50 — 150; and

(c) A class III violation listed in OAR 340-012-0067(3) when an owner or permittee has received prior notice of the violation through a field citation and has not corrected the violation: \$50.

(5) An owner or permittee issued a field citation has 30 calendar days from the date of issuance to submit payment for the total field penalty amount. Payment is deemed submitted when received by the department. A check or money order in the amount of the field penalty must be submitted to: Department of Environmental Quality — Business Office, 811 SW Sixth Avenue, Portland, OR 97204. Participation in the expedited enforcement process is voluntary — by submitting payment, the owner and permittee agree to accept the field citation as the final order by the commission and to waive any right to an appeal or any other judicial review of the determination of violation, compliance schedule or assessment of the field penalty in the field citation.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.835

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 12-2004, f. & cert. ef. 12-27-04; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0300

Installation of USTs and Piping

(1) An owner and permittee must have an installation certificate issued by the department before beginning installation of the UST (OAR 340-150-0160). The requirements and procedures for applying for an UST installation certificate are described in OAR 340-150-0020.

(2) An owner and permittee must install USTs and underground piping in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions. The codes and standards listed in Appendix A of this division may be used to comply with the requirements of this rule.

(3) An owner and permittee must install USTs and underground piping that are made of or lined with materials that are compatible with the substance stored in the UST system. An owner and permittee storing alcohol blends may use the codes listed in Appendix B of this division to comply with the requirements of this section of the rule.

(4) An owner and permittee must install UST systems that meet the following performance standards:

(a) Spill and overfill prevention equipment and requirements (OAR 340-150-0310);

(b) Corrosion protection performance standards for USTs and underground piping (OAR 340-150-0320); and

(c) Release detection performance standards (OAR 340-150-0400 through 340-150-0470).

(5) All new and replacement USTs and connected piping must be secondarily contained and monitored using the interstitial monitoring release detection method specified in 340-150-0465. Secondary containment systems must be designed, constructed and installed to contain regulated substances released from the UST system until they are detected and removed, and prevent the release of regulated substances to the environment any time during the operational life of the UST system. In the case of replacement of an existing UST or existing underground piping, secondary containment and interstitial monitoring are required only for the UST or piping being replaced, not to other USTs and connected pipes comprising such systems. Note: This rule does not apply to UST system repairs as specified in OAR 340-150-0350.

Note: DEQ's guidance document, Replacement of Underground Piping, describes when partial replacement of piping requires an entire run of piping to be secondarily contained.

(6) The person installing the UST system must be licensed by the department to perform UST services (OAR chapter 340, division 160), except as provided by OAR 340-150-0156.

(7) At least 30 days before beginning the UST system installation, an owner and permittee, or a licensed service provider acting on behalf of the owner and permittee, must provide notice to the department on an application provided by the department. The department may allow a shorter notice period on a case by case basis.

(8) At least three working days before beginning UST installation, an owner and permittee, or a licensed service provider acting on behalf of the owner and permittee, must notify the department of the confirmed date and time the installation will begin. The department may request additional prior notifications of the start date and time of specific installation or related testing activities.

(9) An owner and permittee must complete an installation checklist on a form provided by the department and submit the checklist to the department before an operating certificate can be issued. The checklist requires information about installation procedures and standards used, including any observations made by a service provider during the installation of the UST system. The checklist must include:

(a) A certification of compliance signed by the owner, permittee and service provider (i.e., the tank installer) that certifies that:

(A) The UST system was installed in accordance with required methods and standards;

(B) The UST system was installed in compliance with requirements for cathodic protection, release detection and spill and overfill protection; and

(C) The owner and permittee will meet requirements for financial responsibility.

(b) One copy of the as-built drawing for the UST facility that includes the locations of all USTs, underground piping and ancillary equipment;

(c) A list of major UST components installed;

(d) All manufacturer specifications, completed checklists or other installation documents for USTs and components, including warranties;

(e) A copy of third party evaluation approval summaries, as applicable to any release detection equipment or methods;

(f) A copy of approval documents (sign-off or pressure test results) provided by the state fire marshal or local fire department, if available; and

(g) Photographs (or color copies of photographs) of key phases of the installation, including, but not limited to, major equipment (i.e., USTs and underground piping) and materials used in the installation, the excavation area before placement of USTs or underground piping, installation area after the placement of USTs and underground piping, but before backfilling and any other items of interest that document the installation process. Videos, negatives, floppy disks, undeveloped film, etc. are not acceptable substitutes for standard color photographs.

(10) An operation certificate will be issued to the permittee in accordance with OAR 340-150-0160(4) after department review and approval of the completed installation checklist and all required documentation.

NOTE 1: USTs and underground piping must be installed to meet all requirements of the Oregon Uniform Fire Code pertaining to USTs in accordance with OAR 837, division 40 "Fire and Life Safety Regulations" (Department of Oregon State Police, Office of State Fire Marshal).

NOTE 2: Appendix J of this division includes a list of additional guidance documents that owners and permittees may find useful.

[ED. NOTE: Appendix & Publications referenced are available from the agency.]

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.765

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0310

Spill and Overfill Prevention Equipment and Requirements

(1) An owner and permittee must install, operate and maintain spill prevention equipment, such as a spill catchment basin or spill bucket, that will prevent the release of a regulated substance to the environment when the transfer hose is detached from the fill pipe.

(2) An owner and permittee must install, operate and maintain overfill prevention equipment and follow fill procedures that prevent any of the fittings located on top of the UST from being exposed to a regulated substance due to overfilling; and

(a) Automatically shuts off flow into the UST when the UST is no more than 95 percent full; or

(b) Alerts the person depositing the regulated substance into the UST when the UST is no more than 90 percent full by restricting the flow into the tank or by triggering a high level alarm.

(3) For all UST systems installed or overfill equipment replaced on or after March 1, 2003, an owner and permittee must be able to provide visual verification that the overfill equipment functions as required by section (2) of this rule. For overfill equipment installed before March 1, 2003, an owner and permittee must be able to demonstrate to the department that the equipment functions properly by any method deemed acceptable by the department.

(4) In addition to the overfill requirements of section (2) of this rule, an owner and permittee must:

(a) Measure the volume of regulated substance in each UST to confirm that the volume available is greater than the volume of the regulated substance to be deposited into the UST before each deposit is made; and

(b) Develop and implement procedures to ensure that each deposit of a regulated substance into the UST is monitored constantly to prevent overfilling and spilling.

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(5) An owner and permittee may use the codes and procedures listed in Appendix C of this division to comply with the requirements of this rule.

(6) Spill and overflow prevention equipment is not required if the UST system is filled by deposits of a regulated substance of no more than 25 gallons at one time (a waste oil tank may be one example).

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.765

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0350

UST System Repairs

(1) An owner and permittee of an UST system requiring repair must effect the repair such that the repair will prevent and detect releases due to structural failure or corrosion as long as the UST system is used to store a regulated substance.

(2) Metal pipe sections and fittings that have released a regulated substance as a result of corrosion or other damage may not be repaired. They must be replaced with new piping that complies with the installation requirements for new UST systems (OAR 340-150-0300).

(3) Repair methods. An owner and permittee must repair UST system components according to the manufacturer's specifications and perform repairs in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory. The codes and standards listed in Appendix H of this division may be used to comply with this section. A manufacturer's authorized representative may make repairs to fiberglass or other nonmetallic USTs.

(4) Lined tanks. An owner and permittee of an UST that has been previously repaired or upgraded using the interior lining method may repair the UST by restoring or adding additional lining to the UST if the metal portion of the UST has been determined to be structurally sound by use of the integrity assessment (inspection) method specified by American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks." An owner and permittee must refer to OAR 340-150-0352 and 340-150-0360 for additional requirements for internally lined tanks. An owner and permittee must permanently decommission an UST if the integrity assessment determines that the UST is no longer structurally sound.

(5) Tanks. Before operating a repaired or newly lined UST, an owner and permittee must:

(a) Have the UST tightness tested after completion of the repair and report to the department any test failures (OAR 340-150-0445); and

(b) For all repaired tanks except those repaired by lining, obtain written documentation that the original manufacturer has recertified the repaired UST as meeting current UST performance requirements (OAR 340-150-0300). If the original manufacturer is not available (e.g., no longer in business, unknown, etc.) another manufacturer of the same tank brand or type must certify in writing that the UST meets the current UST performance requirements.

(6) Piping. Before operating repaired piping, an owner and permittee must have the underground piping tightness tested after completion of the repair and report to the department any test failure (OAR 340-150-0410).

(7) Corrosion protection. An owner and permittee must have a cathodic protection system tested within six months following a repair to ensure proper operation and report to the department any test failure (OAR 340-150-0325).

(8) Spill and overflow. An owner and permittee must repair spill and overflow equipment when necessary; following repair, the spill and overflow equipment must meet the requirements of OAR 340-150-0310.

(9) Record keeping. An owner and permittee must maintain records that demonstrate compliance with the requirements of this rule for the remaining operating life of the UST system. Records must include information such as a description of the work, date performed, name and address of the company that performed the work, equipment model number (as appropriate), test results and any other related data. An owner and permittee must make all repair records available for review by the department upon request.

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

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.765

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0352

UST System Modifications and Additions

(1) An owner and permittee, or a licensed service provider on behalf of the owner and permittee, must:

(a) Notify the department of their intent to modify an UST system at least 30 days before any modification work is scheduled to start by submitting an application for UST system modification to the department.

(b) Notify the department of the confirmed date and time the modification will begin at least three working days before beginning the modification to allow observation by the department.

(2) The owner or permittee must submit a completed UST system modification checklist to the department within 30 days after completion of the modification.

(3) An owner and permittee must follow the requirements of this rule when making UST system modifications including any not specifically listed below.

(4) An owner and permittee of a metal UST previously protected with cathodic protection may modify the UST by the addition of internal lining if all of the following requirements are met:

(a) Before the addition of a lining, the integrity of the tank is assessed by a method that has been third party evaluated and approved on a national level (e.g., the method is on a list of approved alternative integrity assessment methods published by the Environmental Protection Agency);

(b) The lining is installed in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; and

(c) The modifications comply with all requirements of OAR 340-150-0360(2) for internally lined tanks.

(5) An owner and permittee of an UST that has been internally lined may modify the UST by the addition of corrosion protection if all of the following requirements are met:

(a) Before the addition of corrosion protection, the integrity of the UST is assessed using the method specified by American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks" to ensure that the tank is structurally sound and free of corrosion holes and that the lining is still performing according to manufacturer requirements;

(b) The corrosion protection system meets the performance standards of OAR 340-150-0320(3); and

(c) The modifications comply with all requirements of OAR 340-150-0360(2) for internally lined USTs.

(6) For modification of an UST system by the addition of new piping, an owner and permittee must comply with the installation requirements for new UST systems (OAR 340-150-0300) and this rule.

(7) An owner and permittee may use the codes and standards listed in Appendix H of this division to comply with this rule.

(8) An owner and permittee must maintain records that demonstrate compliance with the requirements of this rule for the remaining operating life of the UST system. Records must include a description of the work, date performed, name and address of the company that performed the work, equipment model number (as appropriate), test results, modification application and checklist and any other related data. An owner and permittee must make all records for UST system modifications and additions available for review by the department upon request.

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

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.765

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0354

UST System Replacements

(1) An owner and permittee must replace any part of an UST system as necessary for the UST system to meet the following performance standards:

(a) Spill and overflow protection (OAR 340-150-0310);

(b) Corrosion protection (OAR 340-150-0320 and 340-150-0325); and

(c) Release detection (OAR 340-150-0400 through 340-150-0470).

(2) Metal pipe sections and fittings that have released a regulated substance as a result of corrosion or other damage must be replaced with new piping that complies with the installation requirements for new UST systems (OAR 340-150-0300).

(3) An owner and permittee must maintain records that demonstrate compliance with the requirements of this rule for the remaining operating life of the UST system. Records must include information such as a description of the work, date performed, name and address of the company that performed the work, equipment model number (as appropriate), test results and any other related data. An owner and permittee must make all records for UST system replacements available for review by the department upon request.

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Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995
Stats. Implemented: ORS 466.746 & 466.765
Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0360

Requirements for Internally Lined USTs

(1) Internally lined USTs without corrosion protection. An owner and permittee of an internally lined UST that does not have corrosion protection must have the UST internally inspected or assessed in accordance with a method that has been evaluated and approved by a third party to ensure the tank is structurally sound and the lining is still performing in accordance with all original design specifications. An owner and permittee must have the internal lining inspections or assessments conducted:

- (a) Within ten years after lining; and
- (b) Every five years thereafter.

(2) Internally lined USTs with corrosion protection. An owner and permittee of an internally lined UST that has corrosion protection must conduct internal lining inspections or assessments of the UST as required by section (1) of this rule. However, internal inspections are not required if the owner and permittee meet each of the following conditions:

(a) The integrity of the UST was inspected or assessed before the addition of corrosion protection;

(b) Written documentation of the inspection results and the internal inspection or assessment is provided to the department that demonstrates the work was conducted in accordance with a code of practice developed by a nationally recognized association, an independent testing laboratory or by a method that has been third party evaluated and approved; and

(c) If the original integrity inspection or assessment was not conducted, documentation is not available or the documentation is not sufficient as determined by the department, an owner and permittee must complete at least one internal inspection of the tank lining using the method specified by **American Petroleum Institute Publication 1631**, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks".

(3) The owner and permittee must permanently decommission an UST system if any internal inspection determines that the UST is no longer structurally sound.

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

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.765

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0410

Release Detection Requirements and Methods for Underground Piping

(1) For underground piping that routinely contains a regulated substances, an owner and permittee of a petroleum UST system must provide release detection which meets the requirements of this rule.

(2) Pressurized piping. For underground piping that conveys regulated substances under pressure, an owner and permittee must insure that the piping is equipped with an automatic line leak detector that alerts an owner and permittee to the presence of a leak by restricting or shutting off the flow of regulated substances through underground piping or by triggering an audible or visual alarm. Interstitial monitoring sensor systems or stand alone "sump" sensors are not an acceptable alternative for a line leak detector. In addition,

(a) The line leak detector must be approved by a national organization (e.g., the National Work Group on Leak Detection);

(b) The line leak detector must be capable of detecting a leak of three gallons per hour at ten pounds per square inch line pressure within one hour; and

(c) An annual test of the operation of the line leak detector must be conducted in accordance with the manufacturer's requirements.

(3) In addition to the requirements of section (2) of this rule, an owner and permittee with pressurized piping must conduct an annual line tightness test that can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure. Interstitial monitoring sensors may replace the annual line tightness test if:

(a) The equipment is designed, constructed and installed to monitor all portions of the underground piping that routinely contains a regulated substance; and

(b) The requirements for interstitial monitoring (OAR 340-150-0465) are met.

(4) Suction piping. For underground piping that conveys a regulated substance under suction (i.e., piping that operates at less than atmospheric pressure), an owner and permittee must check the piping for the presence of

air in the pipeline in accordance with the **National Fire Protection Association standard NFPA, 329** "Recommended Practices for Handling Releases of Flammable and Combustible Liquids and Gases" Chapter 5, Release Detection of Tanks and Piping, subsection 5-2.3.2(b), if any of the following indicator conditions are observed by any person dispensing a regulated substance:

(a) If there are indications of air in the pipeline or other unusual operating conditions are observed (refer to **National Fire Protection Association standard NFPA, 329 subsection 5-2.3.2(a)** for specific indicators), the pipeline check valve should be inspected to determine if it is seated tightly. The check valve must be repaired, replaced or sealed off as appropriate depending on the results of the inspection; and

(b) The requirements of OAR 340-150-0350 through 340-150-0354 must be met for any repair, modification or replacement actions taken to correct a problem.

(5) In addition to the requirements of section (4) of this rule, an owner and permittee of suction piping must conduct a line tightness test at least once every three years in accordance with manufacturers requirements.

(6) Release detection is not required for suction piping that is designed and constructed to meet the following standards:

(a) The below grade underground piping operates at less than atmospheric pressure;

(b) The below grade underground piping is sloped so that the contents of the pipe will drain back into the UST if the suction is released;

(c) Only one check valve is present in each suction line;

(d) The check valve is located directly below and as close as practical to the suction pump; and

(e) A method is provided that allows the department to readily determine compliance with this section of the rule.

(7) In lieu of conducting line tightness tests on either pressurized or suction piping, an owner and permittee may conduct monthly monitoring by one of the applicable release detection methods described in OAR 340-150-0450 through 340-150-0470, if the method is designed to detect a release from any portion of the underground piping that routinely contains a regulated substance.

(8) An owner and permittee must retain at a minimum the last completed line test, line leak detector test or the most current 12 consecutive months of release detection records for piping.

(9) An owner and permittee must report to the department any leak test results or other observations or results indicating the possibility of a release within 24 hours as a suspected release (OAR 340-150-0500) and immediately begin investigation in accordance with 340-150-0510.

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

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.765

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0430

Inventory Control Method of Release Detection

(1) An owner and permittee using inventory control as a release detection method must meet the requirements of this rule. Inventory control cannot be used as a release detection method for underground piping.

(2) Use of inventory control as a release detection method is allowed for a period of:

(a) Ten years after the installation of the UST system; or

(b) Ten years after the UST system achieved compliance with corrosion protection requirements; except

(c) In no case may inventory control be used as a primary release detection method after December 22, 2008; and

(d) After the period of use has expired as listed in subsections (a) through (c) of this section, an owner and permittee must use one of the release detection methods in OAR 340-150-0435 or 340-150-0450 through 340-150-0470.

(3) Regulated substance (i.e., product) inventory control must be recorded daily and reconciled monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis.

(4) Inventory volume measurements for regulated substance inputs (deliveries), withdrawals and the amount still remaining in the UST must be recorded each operating day.

(5) The equipment used to measure the level of regulated substance in the UST (e.g., stick or automatic tank gauge) must be capable of measuring the level of the regulated substance over the full range of the tank's height to the nearest one-eighth of an inch.

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(6) Regulated substance inputs must be reconciled with delivery receipts by measurement of the tank inventory volume before and after each delivery.

(7) Regulated substance deliveries must be made through a drop tube that extends to within one foot of the tank bottom.

Note: To meet Stage I air quality vapor control requirements, drop tubes must be within six inches of the tank bottom.

(8) Regulated substance dispensing must be metered and recorded within the local standards for meter calibration or an accuracy of six cubic inches for every five gallons of the regulated substance withdrawn.

(9) The measurement of any water level in the bottom of the tank must be made to the nearest one-eighth of an inch at least once a month.

(10) Any monthly inventory reconciliation (positive or negative) that exceeds the comparison number of 1.0 percent of flow-through plus 130 gallons or greater leak rate in any single month is considered to be a release detection failure. An owner and permittee must:

(a) Report to the department a release detection failure that occurs for two consecutive months within 24 hours as a suspected release (OAR 340-150-0500) and immediately begin investigation in accordance with 340-150-0510; and

(b) Immediately investigate all larger-than-normal or reoccurring variations in results, including widely fluctuating water levels in the UST and report such variations to the department as a suspected release if the variation cannot be accounted for, without waiting to obtain a second month of data.

(11) An owner and permittee must have USTs tightness tested (OAR 340-150-0445) at least once every five years when inventory control is used as the sole or primary release detection method.

(12) An owner and permittee must retain at a minimum the most current 12 consecutive months of release detection records and the last two tightness test results.

(13) An owner and permittee may use the practices described in the American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets", where applicable, as guidance in meeting the requirements of this rule.

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

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.765

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0450

Automatic Tank Gauging Release Detection Method

(1) An owner and permittee using equipment for automatic tank gauging (ATG) that tests for the loss of a regulated substance and conducts inventory control as a release detection method must use equipment that meets the requirements of this section. The ATG system must:

(a) Be able to detect a 0.2 gallon per hour leak rate with a probability of detection of at least 95 percent and a probability of false alarm of no more than 5 percent for all portions of the UST that routinely contain a regulated substance; and

(b) The ATG system must be an approved leak detection method or equipment as listed by a national organization (e.g., the National Work Group on Leak Detection).

(2) For USTs, an owner and permittee must monitor and test for releases at least once every 30 days and record the results for each month.

(3) For underground piping, an owner and permittee must monitor and test for releases if the ATG system is designed to detect a release from any portion of the underground piping that routinely contains a regulated substance and record the results for each month as follows:

(a) Daily for pressurized piping.

(b) Once every 30 days for suction piping.

(4) An owner and permittee must:

(a) Report to the department any leak test results indicating the possibility of a release (i.e., test failure) within 24 hours as a suspected release (OAR 340-150-0500) and immediately begin investigation in accordance with OAR 340-150-0510; and

(b) Immediately investigate all larger-than-normal or reoccurring variations in results, including widely fluctuating water levels in the tank and report such variations as a suspected release if the variation cannot be accounted for, without waiting to obtain a second month of data.

(5) An owner and permittee must retain at a minimum the most current 12 consecutive months of release detection records.

(6) ATG systems installed before December 22, 1990, are exempt from the leak rate quantities, probability limits and third party evaluation requirements of this rule, except:

(a) The ATG system must be able to detect a 0.2 gallon per hour leak rate from any portion of the UST that routinely contains a regulated substance; and

(b) An owner and permittee can only use the ATG system to obtain daily regulated substance volumes for the inventory control release detection method (OAR 340-150-0430) if the ATG does not meet the requirements of section (1) of this rule.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.765

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0455

Vapor Monitoring Release Detection Method

(1) An owner and permittee may use testing or monitoring for vapors within the soil gas of the excavation zone as a release detection method for an UST or underground piping if the method is approved by the department in writing before installing or operating any portion of the vapor monitoring system, including wells.

(2) At least 30 days before installing any portion of the vapor monitoring system, an owner and permittee must submit a written design plan (including all technical data and design information) to the department prepared and signed by a registered professional engineer or a registered geologist specially qualified by education and experience to design release detection systems. The design plan must meet the following minimum requirements:

(a) The materials used as backfill must be sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(b) The stored regulated substance or a tracer compound placed in the UST system, must be sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(c) The measurement of vapors by the monitoring device must not be rendered inoperative by groundwater, rainfall or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

(d) The level of background contamination in the excavation zone must not interfere with the method used to detect releases from the tank; and

(e) The vapor monitors must be designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the UST system, a component or components of that substance or a tracer compound placed in the UST system.

(3) Before installation of monitoring wells, an owner and permittee must have the site assessed to demonstrate compliance with the requirements of this rule and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the UST or underground piping that routinely contains a regulated substance.

(4) The department will approve the installation if, after reviewing the design plan, it determines that the vapor monitoring system proposed is capable of detecting a release from any portion of the UST or underground piping that routinely contains a regulated substance.

(5) An owner and permittee must mark and secure monitoring wells at all times to prevent unauthorized access and tampering.

(6) Release detection observation, documentation and reporting requirements. An owner and permittee must:

(a) Operate and maintain the continuous monitoring device or manual method so the equipment will detect the presence of vapors as noted in subsection (2)(e) of this rule;

(b) Perform an alarm test at least once each month;

(c) Check the excavation zone for releases and record the observation results for each month. At a minimum, records must include documentation that the system is properly operated and maintained and include results of alarm tests which must be made according to the following schedule:

(A) On a daily basis for USTs and pressurized piping.

(B) Once every 30 days for suction piping.

(d) Report any observations or alarms indicating the possibility of a release to the department within 24 hours as a suspected release (OAR 340-150-500) and immediately begin investigation in accordance with OAR 340-150-0510.

(7) An owner and permittee must retain at a minimum the most current 12 consecutive months of release detection records and vapor well installation approval documents must be available for department review upon request.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

ADMINISTRATIVE RULES

Stats. Implemented: ORS 466.746 & 466.765
Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0460

Groundwater Monitoring Release Detection Method

(1) An owner and permittee may use testing or monitoring for liquid regulated substances on or in the groundwater as a release detection method for an UST or underground piping if the method is designed to detect a release from any portion of the UST or underground piping that routinely contains a regulated substance.

(2) At least 30 days before installing or operating any portion of the groundwater monitoring system, an owner and permittee must submit to the department a written design plan (including all technical data and design information) prepared and signed by a registered professional engineer or a registered geologist specially qualified by education and experience to design release detection systems. The design plan must meet the following minimum requirements:

(a) The regulated substance stored must be immiscible in water and have a specific gravity of less than one;

(b) Sufficient data must be included, and periodically checked, to demonstrate that groundwater will never be more than 20 feet from the ground surface and the hydraulic conductivity of the soil between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

(c) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;

(d) Monitoring wells must be sealed from the ground surface to the top of the filter pack; and

(e) Monitoring wells or devices must intercept the excavation zone or be as close to it as is technically feasible.

(3) Before installation of monitoring wells, an owner and permittee must have the site assessed to demonstrate compliance with the requirements of this rule and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the UST or piping that routinely contains a regulated substance.

(4) The department will approve the installation if, after reviewing the design plan, it determines that the groundwater monitoring system proposed is capable of detecting a release from any portion of the UST or underground piping that routinely contains a regulated substance.

(5) An owner and permittee must mark and secure monitoring wells at all times to prevent unauthorized access and tampering.

(6) Release detection observation, documentation and reporting requirements. An owner and permittee must:

(a) Operate and maintain the continuous monitoring device or manual method so the equipment will detect the presence of at least one-eighth of an inch of free product on top of the groundwater in the monitoring wells;

(b) Perform an alarm test at least once each month;

(c) Check the excavation zone for releases and record the observation results for each month. At a minimum, records must include documentation that the system is properly operated and maintained and include results of alarm tests, which must be made according to the following schedule:

(A) On a daily basis for USTs and pressurized piping.

(B) Once every 30 days for suction piping.

(d) Report to the department any observations or alarms indicating the possibility of a release within 24 hours as a suspected release (OAR 340-150-500) and immediately begin investigation in accordance with OAR 340-150-0510.

(7) An owner and permittee must retain at a minimum the most current 12 consecutive months of release detection records and groundwater well installation approval documents must be available for department review upon request.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.765

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0465

Interstitial Monitoring Release Detection Method

(1) An owner and permittee may use an interstitial monitoring system as a release detection method if:

(a) The system is designed, constructed and installed in accordance with a national code of practice or industry standard and the interstitial monitoring system is an approved leak detection system (method and equipment)

for that system as listed by a national organization (e.g., the National Work Group on Leak Detection); and

(b) The system is able to detect a leak from any portion of an UST or underground piping that routinely contains a regulated substance.

(2) An owner and permittee must meet the following requirements for the specific type of UST system or piping:

(a) Multiwalled UST systems. The sampling or testing method must be able to detect a release through the inner wall in any portion of the UST. The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" (2001) may be used as guidance for aspects of the design and construction of underground metal double walled tanks.

(b) UST systems with a secondary barrier within the excavation zone. The sampling or testing method used must be able to detect a release between the UST system and the secondary barrier.

(A) The secondary barrier around or beneath the UST system must consist of artificially constructed material that is sufficiently thick and impermeable (at least 10 -6 cm/sec for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

(B) The secondary barrier must be compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier or allow a release to pass through the barrier;

(C) For USTs with corrosion protection, the secondary barrier must be installed so that it does not interfere with the proper operation of the corrosion protection system;

(D) Groundwater, soil moisture or rainfall cannot render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days or one day if used for pressurized underground piping;

(E) Before installation, an owner and permittee must have the site assessed to demonstrate that the secondary barrier is always above the seasonal high groundwater level and not in a 25-year flood plain, unless the barrier and monitoring system are designed for use under such conditions; and

(F) An owner and permittee must mark and secure monitoring wells at all times to prevent unauthorized access and tampering.

(c) USTs with an internally fitted liner. An automated device must be able to detect a release between the inner wall of the UST and the liner and the liner must be compatible with the regulated substance stored.

(d) Double walled pressurized piping. Interstitial monitoring sensors must be installed in any sump which houses a noncontinuous junction of the interstitial space (e.g., any and all points along the piping run where the interstitial space is no longer continuous).

(3) An owner and permittee must monitor the UST and underground suction piping for a release at least every 30 days and record the results for each month.

(4) An owner and permittee must monitor pressurized underground piping for a release daily and record the results daily for each month.

(5) An owner and permittee must retain at a minimum the most current 12 consecutive months of release detection records. Records must include, at a minimum, the date the system was checked, observations made and the name or initials of the person conducting the monitoring. In addition, records for electronic systems must include: power status (on or off), alarm indication status (yes or no) and sensor malfunction noted (yes or no).

(6) An owner and permittee must report to the department any leak test observations, alarms or results indicating the possibility of a release to the interstitial area within 24 hours as a suspected release (OAR 340-150-0500) and immediately begin investigation in accordance with 340-150-0510.

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

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.765

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0470

Other Methods of Release Detection

(1) An owner and permittee may use a release detection method for an UST or underground piping not otherwise specified in OAR 340-150-0410 through 340-150-0465 if:

(a) The device is able to detect a 0.2 gallon per hour leak rate with a probability of detection of at least 95 percent and a probability of false alarm of no more than 5 percent for all portions of the UST or underground piping that routinely contains a regulated substance;

(b) The method is an approved leak detection method or equipment as listed by a national organization (e.g., the National Work Group on Leak Detection).

(2) An owner and permittee must monitor the UST and underground suction piping for a release at least every 30 days and record the results for each month.

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(3) An owner and permittee must monitor pressurized underground piping for a release daily and record the results daily for each month.

(4) An owner and permittee must:

(a) Report to the department any release detection test results indicating the possibility of a release (i.e., test failure or alarm) within 24 hours as a suspected release (OAR 340-150-0500) and immediately begin investigation in accordance with OAR 340-150-0510; and

(b) Immediately investigate all larger-than-normal or reoccurring variations in monitoring results and, if the variation cannot be accounted for, report such variations to the department as a suspected release without waiting to obtain a second confirmation of data.

(5) An owner and permittee must retain at a minimum the most current 12 consecutive months of release detection records.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.765

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0510

Suspected Release Investigation and Confirmation Steps

(1) Following the discovery of a suspected release of a regulated substance, an owner and permittee must immediately initiate investigation and confirmation of the suspected release as required by this rule. This investigation must be completed within seven days or as otherwise approved or directed by the department.

(2) Upon expiration of the 7-day period or other period approved by the department, an owner and permittee must notify the department of the investigation results by submitting to the department:

(a) A written description of the system test that confirmed a release did not occur, including any test results; or

(b) A written plan of action to complete the suspected release investigation system test or site assessment. Any plan of action must include a firm schedule for completion.

(3) System test.

(a) An owner and permittee must conduct tightness testing to determine whether a leak exists in any portion of the UST that routinely contains a regulated substance (OAR 340-150-0445) or the underground piping (340-150-0410) or both.

(b) An owner and permittee must investigate the cause of a release into any secondary containment unit including, but not limited to, underground piping, turbine sumps, transition sumps and dispenser pans by conducting tests in accordance with manufacturer requirements or as directed by the department. All regulated substances (product) or product and water mixture must be removed from the containment system and properly disposed in accordance with all state, federal and local requirements.

(c) If the suspected release was not reported due to any of the conditions described in OAR 340-150-0500(1)(a) and the system test results do not indicate that a release has occurred, further investigation is not required, unless otherwise directed by the department.

(d) If the suspected release was reported due to any of the conditions described in OAR 340-150-0500(1)(a) or the system test results indicate that a release exists, an owner and permittee must assess and repair, replace or modify the UST system and begin corrective action in accordance with sections (4) and (5) of this rule.

(4) Site assessment.

(a) If the test results for the UST, piping or secondary containment units do not indicate that a release exists, but the suspected release was reported due to any of the conditions described in OAR 340-150-0500(1)(a) or if directed by the department, an owner and permittee must conduct a site assessment for contaminated soil or groundwater. An owner and permittee must measure for the presence of a release where contamination is most likely to be present based on all information available. In selecting sample types, sample locations and measurement methods, an owner and permittee must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth to groundwater and other factors appropriate for identifying the presence and source of the release. The requirements for sample collection, analytical tests and methods contained in OAR 340-122-0205 through 340-122-0360 must be used as appropriate. The department may require that a sampling plan be submitted for approval before conducting any sampling on a case by case basis. In addition:

(b) If the site assessment results do not indicate that a release has occurred, further investigation is not required unless specifically directed by the department.

(c) If the site assessment results indicate that a release has occurred, an owner and permittee must begin corrective action in accordance with section (5) of this rule.

(5) If the suspected release investigation confirms that a release has occurred, an owner and permittee must report the confirmed release to the department within 24 hours of confirmation and comply with the following release reporting, site investigation and corrective action requirements:

(a) For petroleum USTs; OAR 340-122-0205 through 340-122-0360.

(b) For USTs containing non petroleum regulated substances; OAR 340-122-0010 through 340-122-0115, except that releases must be reported in accordance with the requirements of OAR chapter 340, division 142.

(6) The department may require that an owner and permittee perform additional actions not specifically listed in this rule on a case by case basis to address actual or potential threat to human health or the environment.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.765

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0555

Compliance Dates for USTs and Piping

(1) An owner and permittee must comply with all release detection requirements for a new or existing UST system or permanently close the UST system by the following schedule:

(a) For UST systems installed before 1965 and for UST systems where the installation date is unknown:

(A) December 22, 1989, for tanks and suction piping.

(B) December 22, 1990, for pressurized piping.

(b) For UST systems installed between 1965 and 1969 - December 22, 1990, for tanks, suction piping and pressurized piping.

(c) For UST systems installed between 1970 and 1974:

(A) December 22, 1990, for pressurized piping.

(B) December 22, 1991, for tanks and suction piping.

(d) For UST systems installed between 1975 and 1979:

(A) December 22, 1990, for pressurized piping.

(B) December 22, 1992, for tanks and suction piping.

(e) For UST systems installed between 1980 and December 22, 1988:

(A) December 22, 1990, for pressurized piping.

(B) December 22, 1993, for tanks and suction piping.

(f) For tanks, suction piping and pressurized piping, release detection requirements must be met upon date of installation for all new UST systems installed after December 22, 1988.

(2) An owner and permittee of a new UST system installed after December 22, 1988, must comply with the corrosion protection performance standards for tanks and piping (OAR 340-150-0320 and 340-150-0325) at the time of installation .

(3) An owner and permittee of an existing UST system installed on or before December 22, 1988, must comply with the requirements for upgrading USTs and piping (OAR 340-150-0560) by no later than December 22, 1998.

(4) An owner and permittee that does not comply with section (2) or (3) of this rule must decommission the UST system in compliance with the requirements of OAR 340-150-0166 through 340-150-0168 by no later than December 22, 1998.

(5) An owner and permittee of a hazardous substance UST system (e.g., an UST containing any nonpetroleum regulated substance) installed on or before December 22, 1988, must comply with the release detection requirements of OAR 340-150-0400 and 340-150-0410 until December 22, 1998. After December 22, 1998, an owner and permittee of a hazardous substance UST system must comply with the requirements of OAR 340-150-0420.

(6) An owner and permittee of a new or existing UST system that does not meet the performance standards in OAR 340-150-0300 or 340-150-0560 may use monthly inventory control and annual tank tightness testing as a release detection method until December 22, 1998. After that date, an owner and permittee must upgrade or permanently close the UST system.

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.765

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-150-0560

Upgrading Requirements for Existing UST Systems

This rule describes the technical requirements for UST systems that an owner and permittee was required to meet by December 22, 1998, in accordance with OAR 340-150-0555(3). The equivalent federal rule citation has been included for reference.

(1) Tank upgrading requirements. An owner and permittee of a steel UST must upgrade the UST system to meet one of the following require-

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ments in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory (40 CFR 280.21(b)):

(a) Interior lining. An UST may be upgraded by internal lining (40 CFR § 280.21(b)(1) if:

(A) The lining is installed in accordance with the requirements of 40 CFR § 280.33 (OAR 340-150-0352); and

(B) Within ten years after lining and every five years thereafter, the lined UST is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications (OAR 340-150-0360).

(b) Cathodic protection (40 CFR § 280.21(b)(2)). An UST may be upgraded by the addition of cathodic protection if the cathodic protection system meets the requirements of 40 CFR § 280.20(a)(2)(ii), (iii) and (iv) (OAR 340-150-0320(3)) and the integrity of the UST is ensured using one of the following methods:

(A) The UST is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes before installing the cathodic protection system;

(B) The UST has been installed for less than ten years and is monitored monthly (or daily as required by the specific method) for releases in accordance with 40 CFR § 280.43(d) through (h) (OAR 340-150-0450 through 340-150-0470);

(C) The UST has been installed for less than ten years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of 40 CFR § 280.43(c) (OAR 340-150-0445). The first tightness test must be conducted before installing the cathodic protection system. The second tightness test must be conducted between three and six months following the first operation of the cathodic protection system; or

(D) The UST is assessed for corrosion holes by a method that is determined by the department to prevent releases in a manner that is no less protective of human health and the environment than the methods described in paragraphs (A) through (C) of this subsection.

(c) Internal lining combined with cathodic protection (40 CFR § 280.21(b)(3)). An UST may be upgraded by both internal lining and cathodic protection if:

(A) The lining is installed in accordance with the requirements 40 CFR § 280.33 (OAR 340-150-0352); and

(B) The cathodic protection system meets the requirements of 40 CFR § 280.20(a)(2)(ii), (iii) and (iv) (OAR 340-150-0320(3)).

(2) An owner and permittee may use the following codes and standards to comply with section (1) of this rule:

(a) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks";

(b) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection";

(c) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried or Submerged Liquid Storage Systems"; and

(d) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems."

(3) Piping upgrading requirements (40 CFR 280.21(c)). An owner and permittee of metal underground piping that routinely contains a regulated substance must cathodically protect the piping in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and meet the requirements of 40 CFR § 280.20(b)(2)(ii) (iii) and (iv) (OAR 340-150-0320(2) through (4)). An owner and permittee may use the following codes and standards to comply with this requirement (40 CFR § 280.20(b)):

(a) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe";

(b) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas";

(c) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and

(d) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."

(4) Spill and overflow prevention equipment (40 CFR § 280.21(d)). To prevent spilling and overfilling associated with transfer of a regulated substance to the UST system, an owner and permittee of an existing UST system must comply with new UST system spill and overflow prevention equipment requirements specified in 40 CFR § 280.20(c) (OAR 340-150-0310).

(5) Reporting requirements (40 CFR § 280.21(e) as previously modified by OAR 340-150-0003(41)). At least 30 days before beginning the upgrading of an existing UST system under sections (1) and (3) of this rule, an owner and permittee must notify the department, on a form provided by the department, of their intent to upgrade an existing UST system. Unless the department agrees to waive the requirement, at least three working days before beginning the upgrade, an owner, permittee or licensed service provider performing the work must notify the department of the confirmed date and time the upgrade will begin to allow observation by the department. An owner, permittee or licensed service provider must submit a completed installation checklist to the department within 30 days after completion of the upgrade.

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

Stat. Auth.: ORS 466.706 - 466.835, 466.994 & 466.995

Stats. Implemented: ORS 466.746 & 466.765

Hist.: DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-160-0030

Licensing of UST Service Providers

(1) To apply for a service provider license, a person must submit an application to the department on a form provided by the department that includes:

(a) The name, address and telephone number of the applicant;

(b) The category(ies) of UST services to be performed;

(c) A summary of the UST services provided by the applicant within the two year period immediately preceding the application, including the number of UST service projects completed in each category of UST services and identification of any other industry or government licenses held by the applicant related to specific UST services;

(d) A list of employees with supervisor licenses, the specific UST services for which they are licensed, the date the employee received a license from the department and each employee's license number;

(e) A signed statement that certifies that: "I [insert name], am the chief executive officer of [insert company name] and do hereby certify that I have obtained a copy of the applicable laws and rules pertaining to the regulation of underground storage tanks in the State of Oregon and that I have read them and will direct the employees and principals of this company to perform the UST services rendered by this company in accordance with those laws and rules"; and

(f) The required license fee.

(2) The department will review the application for completeness. If the application is incomplete, the applicant will be notified in writing of the deficiencies.

(3) The department may deny, in writing, a license to an applicant who has not satisfied the license application requirements.

(4) If the application is approved, a service provider license will be issued to the applicant. The license is valid for a period of 24 months.

(5) License renewals must be applied for in the same manner as required for an initial license, except the service provider must submit the complete renewal application to the department at least 30 days before the expiration date of the current license.

(6) The department may suspend, revoke or refuse to issue a license if the service provider:

(a) Fraudulently obtains or attempts to obtain a license;

(b) Fails at any time to satisfy the requirements for a license or to comply with the rules of this division or OAR chapter 340, division 150;

(c) Fails to meet any applicable state or federal standard relating to the UST services performed under the license; or

(d) Fails to employ and designate a licensed supervisor for each UST service project.

(7) A service provider who has a license suspended or revoked may reapply for a license after demonstrating to the department that the cause of the suspension or revocation has been resolved.

(8) If a service provider no longer employs a licensed supervisor, the service provider must immediately cease providing UST services. The service provider cannot provide UST services until a licensed supervisor is again employed by the service provider and written notice of the hiring of a licensed supervisor is received by the department.

Stat. Auth.: ORS 466.746 & 466.750

Stats. Implemented: ORS 466.750

Hist.: DEQ 3-1989, f. & cert. ef. 3-10-89; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

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340-160-0150

Fees

(1) The nonrefundable application fee for a service provider license is \$600.

(2) The nonrefundable application fee for a supervisor license is \$150. This fee covers up to four supervisor license categories, if the expiration date is the same for all license categories.

Stat. Auth.: ORS 466.746 & 466.750

Stats. Implemented: ORS 466.750

Hist.: DEQ 3-1989, f. & cert. ef. 3-10-89; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-162-0005

Authority, Purpose, and Scope

(1) These rules are promulgated in accordance with and under the authority of ORS 466.750.

(2) The purpose of these rules is to provide for the regulation of firms and persons who cleanup soil contamination resulting from spills and releases of oil from underground storage tanks utilizing the soil matrix standards in OAR 340-122-0205 to 340-122-0360. These rules establish standards for:

(a) Licensing of firms performing underground storage tank soil matrix cleanup services for underground storage tanks;

(b) Examination, qualification and licensing of individuals who supervise soil matrix cleanup services for underground storage tanks;

(c) Administration and enforcement of these rules by the Department.

(3) Scope:

(a) OAR 340-162-0005 through 340-162-0150 applies to the cleanup by any person of soil contamination resulting from spills and releases of oil from underground storage tanks regulated by ORS 466.706 through 466.835 and 466.895 through 466.995 and OAR chapter 340, division 150;

(b) OAR 340-162-0005 through 340-162-0150 do not apply to services performed by the tank owner, property owner or permittee.

(4) Service Providers and Supervisors licensed under this Division are also licensed to perform work under OAR chapter 340, division 163 — Registration and Licensing Requirements for Heating Oil Tank Soil Matrix Cleanup Service Providers and Supervisors.

Stat. Auth.: ORS 466.706 - 466.895 & 466.995

Stats. Implemented: ORS 466.750

Hist.: DEQ 27-1990, f. & cert. ef. 7-6-90; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-162-0010

Definitions

As used in these rules:

(1) "Commission" means the Environmental Quality Commission.

(2) "Closure" means to remove an underground storage tank from operation, either temporarily or permanently, by abandonment in place or by removal from the ground.

(3) "Department" means the Oregon Department of Environmental Quality.

(4) "Director" means the Director of the Oregon Department of Environmental Quality.

(5) "Facility" means the location at which underground storage tanks are in place or will be placed. A facility encompasses the entire property contiguous to the underground storage tanks that is associated with the use of the tanks.

(6) "Fee" means a fixed charge or service charge.

(7) "Firm" means any business, including but not limited to corporations, limited partnerships, and sole proprietorship, engaged in the performance of tank services.

(8) "Licensed" means that a firm or an individual with supervisory responsibility for the performance of tank services has met the Department's experience and qualification requirements to offer or perform services related to underground storage tanks and has been issued a license by the Department to perform those services.

(9) "Oil" means gasoline, crude oil, fuel oil, diesel oil, lubrication oil, sludge, oil refuse and any other petroleum related product or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(10) "Permittee", as used in this section, has the meaning set forth in ORS 466.706(15).

(11) "Soil Matrix Cleanup" means action taken to comply with OAR 340-122-0205 through 340-122-0360.

(12) "Supervisor" means a licensed individual operating alone or employed by a contractor and charged with the responsibility to direct and oversee the performance of tank services at a facility.

(13) "Tank" means underground storage tank.

(14) "Tank Services" include but are not limited to soil cleanup.

(15) "Tank Services Provider" is an individual or firm registered and, if required, licensed to offer or perform tank services on regulated underground storage tanks.

(16) "Underground Storage Tank" or "UST" means an underground storage tank as defined in OAR Chapter 340, Division 150.

Stat. Auth.: ORS 466.706 - 466.895 & 466.995

Stats. Implemented: ORS 466.706 & 466.750

Hist.: DEQ 27-1990, f. & cert. ef. 7-6-90; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-162-0020

General Provisions

(1) After January 1, 1991, no firm shall offer underground storage tank soil matrix cleanup services without first having obtained a license from the Department.

(2) Proof of licensing must be available at all times a service provider is performing soil matrix cleanup services.

(3) After January 1, 1991, Underground Storage Tank Soil Matrix Cleanup Service Providers licensed to perform cleanup services are prohibited from offering or performing cleanup services on regulated underground storage tanks unless an underground storage tank has been issued a permit by the department.

(4) Any Underground Storage Tank Soil Matrix Cleanup Service Provider licensed or certified by the Department under the provisions of these rules shall:

(a) Comply with the appropriate provisions of OAR 340-162-0005 through 340-162-0150;

(b) Comply with the appropriate provisions of OAR 340-122-0205 through 340-122-0360;

(c) Maintain a current address on file with the Department; and

(d) Perform underground storage tank soil matrix cleanup services in a manner which conforms with all federal and state regulations applicable at the time the services are being performed.

(5) A firm licensed to perform underground storage tank soil matrix cleanup services must submit a checklist to the department following the completion of a soil matrix cleanup. The checklist form will be made available by the Department.

(6) After January 1, 1991, a licensed underground storage tank soil matrix cleanup services supervisor shall be present at a tank site when the following tasks are being performed:

(a) During all excavations made after a leak is suspected or has been confirmed;

(b) When any tanks or lines are removed or decommissioned as a result of a suspected or confirmed release;

(c) When all soil and/or water samples are collected, stored, and packed for shipping to the analytical testing laboratory;

(d) When any soil borings, back-hoe pits or other excavations are made for the purpose of investigating the extent of contamination;

(e) During removal from the open excavation or disposal of any free product or groundwater; and

(7) After January 1, 1991 Underground Storage Tank Soil Matrix Cleanup Service Providers shall not backfill or close a soil matrix cleanup excavation site before a Department inspection unless authorized verbally or in writing by the Department. Verbal approvals will be confirmed in writing within 30 days by the Department.

NOTE: Additional Oregon licenses may be required when performing soil cleanup services at underground storage tanks and heating oil tanks. See Construction Contractor License requirements in OAR 812-003-0100 through 812-002-0450 and Monitoring Well Constructor License requirements in OAR 690-240-0055 through 690-240-0070.

Stat. Auth.: ORS 465.200 - 465.320 & 466.706 - 466.995

Stats. Implemented: ORS 466.706 & 466.750

Hist.: DEQ 27-1990, f. & cert. ef. 7-6-90; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

340-162-0040

Examination Schedule

To apply for a license from the department to supervise soil matrix cleanups, an individual must take and pass a qualifying examination approved by the department.

Stat. Auth.: ORS 466.706 - 466.895 & 466.995

Stats. Implemented: ORS 466.750

Hist.: DEQ 27-1990, f. & cert. ef. 7-6-90; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

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340-162-0150

Fees

(1) Fees shall be assessed to provide revenues to operate the underground storage tank soil matrix cleanup services licensing program. Fees are assessed for the following:

- (a) Underground Storage Tank Soil Matrix Cleanup Service Provider; License;
- (b) Underground Storage Tank Soil Matrix Cleanup Supervisors License;
- (c) Underground Storage Tank Soil Matrix Cleanup Examination Study Guides.

(2) Underground Storage Tank Soil Matrix Cleanup service providers shall pay a non-refundable license application fee of \$600 for a 24 month license.

(3) Individuals seeking to obtain an underground storage tank soil matrix cleanup supervisor's license shall pay a non-refundable license application fee of \$150 for a 24 month license.

(4) Examination study guides shall be made available to the public for the cost of production.

(5) Replacement licenses will be provided by the department for a fee of \$10.

Stat. Auth.: ORS 465.200 - 465.320 & 466.706 - 466.995

Stats. Implemented: ORS 466.750

Hist.: DEQ 27-1990, f. & cert. ef. 7-6-90; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 8-2005, f. & cert. ef. 7-14-05; DEQ 3-2008, f. 2-29-08, cert. ef. 3-10-08

Rule Caption: Amend Plant Site Emission Limit Applicability Rule.

Adm. Order No.: DEQ 4-2008(Temp)

Filed with Sec. of State: 3-4-2008

Certified to be Effective: 3-6-08 thru 9-1-08

Notice Publication Date:

Rules Amended: 340-222-0020

Subject: The applicability rules for the Plant Site Emission Limit (PSEL) rule in OAR 340 division 222 are being amended to exempt chemical substances regulated under the Accidental Release Prevention rule and the Early Reduction High Risk Pollutants rule. Sources subject to the PSEL rule will not have to be assigned a Plant Site Emission Limit for the exempted substances.

Rules Coordinator: Larry McAllister—(503) 229-6412

340-222-0020

Applicability

(1) Plant Site Emission Limits (PSELs) will be included in all Air Contaminant Discharge Permits (ACDP) and Oregon Title V Operating Permits, except as provided in section (3), as a means of managing airshed capacity by regulating increases and decreases in air emissions. Except as provided in OAR 340-222-0060 or 340-222-0070, all ACDP and Title V sources are subject to PSELs for all regulated pollutants. The Department will incorporate PSELs into permits when issuing a new permit or renewing or modifying an existing permit.

(2) The emissions limits established by PSELs provide the basis for:

- (a) Assuring reasonable further progress toward attaining compliance with ambient air standards;
- (b) Assuring compliance with ambient air standards and Prevention of Significant Deterioration increments;
- (c) Administering offset and banking programs; and
- (d) Establishing the baseline for tracking the consumption of Prevention of Significant Deterioration Increments.

(3) PSELs are not required for:

- (a) Pollutants that will be emitted at less than the de minimis emission level listed in OAR 340-200-0020 from the entire source;
- (b) Short Term Activity and Basic ACDPs; or
- (c) Hazardous air pollutants as listed in OAR 340-244-0040 Table 1; Early Reduction High Risk Pollutants listed in OAR 340-244-0120 Table 2; or Accidental Release Substances listed in OAR 340-244-0230 Table 3.

(4) Generic PSELs may be used for any category of ACDP or Title V permit.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

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

Stat. Auth.: ORS 468.020 & 468A.040

Stats. Implemented: ORS 468.020, 468.065 & 468A.025

Hist.: DEQ 25-1981, f. & cert. ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0301; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-

1010; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2008(Temp), f. 3-4-08, cert. ef. 3-6-08 thru 9-1-08

Department of Fish and Wildlife Chapter 635

Rule Caption: Rules to allow Capture of Peregrine Falcons for Use in Falconry.

Adm. Order No.: DFW 11-2008

Filed with Sec. of State: 2-21-2008

Certified to be Effective: 2-21-08

Notice Publication Date: 1-1-2008

Rules Amended: 635-055-0000, 635-055-0020, 635-055-0030, 635-055-0035, 635-055-0075

Subject: Rules to allow the capture of Peregrine Falcons to be used in the practice of Falconry.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-055-0000

Definition of Terms

For the purpose of these rules, the following definitions apply:

(1) "Captive bred" means any raptor, including eggs, hatched in captivity resulting from parents that mated in captivity, or are the progeny of artificial insemination.

(2) "Falconry" is caring for and training raptors for pursuit of game, and the sport of hunting wild game with raptors.

(3) "Indigenous raptor", for purposes of falconry, means golden eagle (*Aquila chrysaetos*), sharp-shinned hawk (*Accipiter striatus*), Cooper's hawk (*Accipiter cooperii*), northern goshawk (*Accipiter gentilis*), red-tailed hawk (*Buteo jamaicensis*), American kestrel (*Falco sparverius*), merlin (*Falco columbarius*), prairie falcon (*Falco mexicanus*), peregrine falcon (*Falco peregrinus*), gyrfalcon (*Falco rusticolus*), and great horned owl (*Bubo virginianus*),

(4) "Passage" means first year migrant raptors capable of flight.

(5) "Raptor" means any species or hybrid of the families Strigidae, Falconidae and Accipitridae.

(6) "Raptors at hack" means the intentional release of a raptor as a training technique, with the expectation of recapture after a period of time.

(7) "Take", for the purposes of these rules, means to trap, capture, or attempt to trap or capture a raptor from the wild for the purpose of falconry.

Stat. Auth.: ORS 496

Stats. Implemented: ORS 496

Hist.: FWC 170, f. 12-23-77, ef. 1-1-78; FWC 11-1983, f. & ef. 3-24-83; FWC 7-1984, f. & ef. 2-29-84; FWC 19-1990, f. & cert. ef. 2-28-90; DFW 33-2002, f. & cert. ef. 4-18-02; DFW 11-2008, f. & cert. ef. 2-21-08

635-055-0020

Qualifications

(1) All licensed Oregon falconers shall be residents of Oregon. A resident shall have a permanent residence and falconry facilities in Oregon; however, there is no time minimum before a person can claim residency for falconry purposes. Any person falconry hunting in Oregon with a resident hunting license must satisfy the residency requirements as detailed in OAR 635-052, 635-053, 635-054 and 635-065.

(2) All falconers shall demonstrate knowledge of the care of raptors, practice of falconry, and wildlife laws and regulations pertaining to hunting and falconry by receiving a score of 80 percent or higher on a written examination approved by the U.S. Fish and Wildlife Service or by showing documented falconry experience from another state having a federally approved falconry program before receiving their first Oregon Falconry Permit. Any applicant who fails to pass an examination may take another examination no earlier than 30 days from the date of the prior examination.

(3) All falconers shall possess adequate facilities and equipment to care for raptors under their care.

(4) An applicant for a falconry license shall be one of the following:

(a) "Apprentice Falconer":

(A) Be at least fourteen (14) years of age;

(B) Be sponsored by a "Master Falconer" or, a "General Falconer" with at least three years experience. The sponsor shall supervise and guide the Apprentice Falconer on care, capture, and training of raptors and shall submit a written recommendation to the Department when the Apprentice is qualified to become a General Falconer.

(b) "General Falconer":

(A) Be at least eighteen (18) years of age;

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(B) Have at least two years experience as an "Apprentice Falconer" or documented equivalent falconry experience from a state having a federally approved falconry program.

(c) "Master Falconer":

(A) Have five years experience as a "General Falconer" or documented equivalent falconry experience from a state having a federally approved falconry program.

(5) Persons with an expired falconry license may renew: the license as a General or Master Falconer if they can provide verified or verifiable documentation of the last level attained. Persons with no documentation of past falconry experience shall re-test at the apprentice level.

(6) Persons moving to Oregon from foreign countries must demonstrate knowledge of the care of raptors, practice of falconry, and wildlife laws and regulations pertaining to hunting and falconry by receiving a score of 80 percent or higher on a written examination. Foreign applicants must provide written documentation from their government of past falconry experience which details their experience level to be licensed at the General or Master levels. Persons with no documentation of past falconry experience shall re-test at the apprentice level.

Stat. Auth.: ORS 496

Stats. Implemented: ORS 496

Hist.: FWC 170, f. 12-23-77, ef. 1-1-78; FWC 11-1983, f. & ef. 3-24-83; FWC 12-1985, f. & ef. 3-6-85; FWC 19-1990, f. & cert. ef. 2-28-90; DFW 33-2002, f. & cert. ef. 4-18-02; DFW 11-2008, f. & cert. ef. 2-21-08

635-055-0030

Limitations on Species Captured and/or Held

(1) The following restrictions are placed on the number of raptors that may be captured in Oregon and/or held for falconry, including non-indigenous species:

(a) Apprentice Falconer — may possess only one raptor, and may obtain only one replacement during any capture season. The raptor shall be an American kestrel, or Red-tailed hawk, captured from the wild under the direct supervision and accompanied by the Apprentice's sponsor. Apprentice falconers shall not take nestling raptors.

(b) General Falconer — may possess not more than two raptors, including captive bred raptors, but may obtain two replacement raptors from the wild in Oregon during a capture season. A General Falconer may capture and/or possess red-tailed hawk, American kestrel, Cooper's hawk, sharp-shinned hawk, goshawk, prairie falcon, merlin or great horned owl. A General Falconer may obtain any number of captive bred raptors so long as the number of raptors held does not exceed two. A General falconer may possess any legally acquired non-indigenous raptor and legally acquired wild captured indigenous raptors.

(c) Master Falconer — may possess not more than three raptors and may obtain two replacement raptors from the wild in Oregon during a capture season. A Master Falconer may capture and/or possess great horned owl, red-tailed hawk, American kestrel, Cooper's hawk, sharp-shinned hawk, goshawk, prairie falcon, merlin, gyrfalcon, peregrine falcon or golden eagle. A Master Falconer may obtain any number of captive bred raptors so long as the number of raptors held does not exceed three. A Master falconer may possess any legally acquired non-indigenous raptor and legally acquired wild captured indigenous raptors.

(2) Young raptors of the year shall be taken (unless otherwise noted e.g. by permit) on weekends only from the third Saturday in May through the third Sunday in October, and then daily through the last day of February of the following year. This period comprises the "capture season".

(4) Any adult raptor inadvertently taken must be immediately released.

(5) Only the following raptor species and number of each shall be taken in the state during the capture season unless otherwise specified:

(A) Red-tailed hawk, American kestrel, Cooper's hawk, sharp-shinned hawk and great horned owl — unlimited and statewide except that owls may be taken as nestlings only.

(B) Goshawk - unlimited and statewide except that no nestling goshawks may be taken in the area north of the Umpqua River and west of Interstate 5. Passage goshawks may be taken statewide.

(C) Prairie falcon — unlimited and statewide except that Wasco, Gilliam, Umatilla, Morrow, Sherman, Jackson and Josephine counties are closed to take of prairie falcons.

(D) Merlin — unlimited and statewide except no nestling merlins may be taken.

(E) Gyrfalcon — only 3 gyrfalcons may be captured during a capture season. Gyrfalcons may be captured statewide. Gyrfalcon capture permits are issued to Master Falconers only and an individual falconer may not capture more than one gyrfalcon per capture season. All gyrfalcon capture per-

mit holders will be notified when the quota has been reached. No take of gyrfalcons is authorized for non-resident falconers.

(6) Golden eagle — unlimited, capture authorized for counties east of the crest of the Cascade Mountain range only. Golden eagles may be captured, imported and/or used for falconry only in accordance with Federal falconry standards as detailed in 50 CFR § 22.24.

(7) Peregrine falcons maybe taken statewide. By January 1 of each year, the Commission will establish allowable take of peregrine falcons, not to exceed five percent of the estimated annual productivity of young peregrine falcons in Oregon, as required by U.S. Fish and Wildlife Service in its Environmental Assessment for the Take of Nestling Peregrine Falcons (Federal Register March 10, 2004, Volume 69, Number 47, page 11455).

(8) The possession of legally acquired non-indigenous raptors listed as a migratory bird in 50 CFR §10.13 is allowed. Only indigenous raptor species, raptors listed in 50 CFR §10.13 and raptors classified as non-controlled or controlled in the Oregon Wildlife Integrity Rules (OAR 635-056) are allowed. The possession for falconry purposes of hybrid raptors of species listed in 50 CFR §10 are allowed.

Stat. Auth.: ORS 496.012, 496.112, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.112, 496.138, 496.146 & 496.162

Hist.: FWC 170, f. 12-23-77, ef. 1-1-78; FWC 9-1980, f. & ef. 2-27-80; FWC 8-1981, f. & ef. 2-26-81; FWC 11-1983, f. & ef. 3-24-83; FWC 7-1984, f. & ef. 2-29-84; FWC 19-1990, f. & cert. ef. 2-28-90; FWC 30-1993, f. & cert. ef. 5-5-93; DFW 33-2002, f. & cert. ef. 4-18-02; DFW 11-2008, f. & cert. ef. 2-21-08

635-055-0035

Capture and Transportation of Raptors

A raptor capture permit is required prior to capturing or attempting to capture any raptor. A non-resident falconer from a state having a federally approved falconry program may obtain a capture permit for a red-tailed hawk, Cooper's hawk, sharp-shinned hawk, prairie falcon, peregrine falcon, great horned owl, golden eagle or American kestrel only. All non-resident applications must include copies of current state and federal falconry permits. All applicants for golden eagle capture must include a copy of the federal authorization to take golden eagles. Only 20 non-resident capture permits will be issued in total each capture season. All non-resident capture permits will be issued on a first come first served basis.

(1) An application fee of \$10 will be charged for each capture permit allowing the capture of one raptor per permit.

(2) Except for take of nestling (eyas) peregrine falcons, the Department will issue capture permits in the order applications are received. The permit process will begin January 1st of each year, and applicants must hold a valid Oregon falconry license. The category of species shall be listed on the permit (e.g. "golden eagle", "gyrfalcon", "eyas peregrine falcon", or "other raptor") and the falconer is authorized to take only one raptor from the category specified. A falconer may apply for a capture permit in more than one category. The falconer whose name appears on the permit must do the capturing; the permit is not transferable.

(3) Capture permits for nestling peregrine falcons may be submitted to the department beginning January 1st and received no later than April 1st of each year, and available capture permits will be allocated on a first come, first served basis. The Department will cease to issue permits as soon as the five percent quota has been met. Of the number of permits available for issuance annually, the Department will make one such permit available to nonresidents. Each permit will include conditions crafted by the Department on a case by case basis to address the particular proposal to capture peregrine falcons. Such conditions may include, but are not limited to, requirements to protect the safety of falconers and other humans during capture of peregrine falcons, and shall specify where the permittee may capture peregrine falcons. The following general conditions apply to all peregrine falcon capture permits:

(a) Young falcons may be removed from their eyries from May 15th to June 30th daily and when only between 15 and 24 days of age. At least one nestling must be left in each eyrie prior to fledging. A young (fledgling) peregrine falcon may be taken up to 30 days after leaving the nest.

(b) Take of passage peregrine.

(c) Each falconer who takes a peregrine falcon from the wild must report the sex and precise capture location to the Department and the U.S. Fish and Wildlife Service within 5 days after. If the falconer later determines that the sex of any peregrine falcon taken was reported incorrectly, then the falconer must submit a corrected report as soon as possible after discovering the error.

(d) Falconers must band each peregrine falcon taken with a band provided by the Department.

(e) After a captured falcon reaches 30 days of age, the falconer must pluck breast feathers from the falcon and submit them to the U.S. Fish and Wildlife Service, along with a written record of the precise location of

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where the bird was taken from in the wild. The address for submission is U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, Virginia 22203-1610.

(4) Upon taking the raptor authorized, the permittee shall immediately validate the permit by recording the date, species, sex, county, and capture method and signing his/her name in the space provided. At the time of capture, the permittee shall affix the permanent plastic band, issued with the permit, to one leg of the bird. Within five business days of capture, the permittee shall take the bird to a Department office to have the permit certified.

(5) Lost, raptors at hack, or captive bred raptors may be retrapped at anytime without a capture permit. All other raptors captured shall be immediately released.

(6) Exportation of wild caught raptors — No raptor taken from the wild in Oregon shall be transferred to another person residing outside the state except those Oregon wild caught raptors held for six months or longer may be transferred to another person residing outside the state.

(7) An Oregon licensed falconer is allowed to retain legally captured raptors in their possession if they move from Oregon.

(8) Falconers are responsible for treatment and rehabilitation costs of raptors taken for falconry and injured during trapping efforts.

Stat. Auth.: ORS 496.012, 496.112, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.112, 496.138, 496.146 & 496.162
Hist.: FWC 170, f. 12-23-77, ef. 1-1-78; FWC 9-1980, f. & ef. 2-27-80; FWC 8-1981, f. & ef. 2-26-81; FWC 14-1982, f. & ef. 2-25-82; FWC 11-1983, f. & ef. 3-24-83; FWC 8-1986, f. & ef. 3-6-86; FWC 19-1990, f. & cert. ef. 2-28--90; FWC 40-1991, f. & cert. ef. 4-24-91; FWC 33-1992(Temp), f. & cert. ef. 5-11-92; FWC 116-1992, f. & cert. ef. 10-28-92; FWC 30-1993, f. & cert. ef. 5-5-93; DFW 33-2002, f. & cert. ef. 4-18-02; DFW 11-2008, f. & cert. ef. 2-21-08

635-055-0075

Disposition of Accidentally Killed Wildlife

Any licensed falconer, whose raptor accidentally kills wildlife during closed season, or of the wrong species or sex, shall promptly turn in the wildlife to the Department, or Oregon State Police.

Stat. Auth.: ORS 396 & 496
Stats. Implemented: ORS 396 & 496
Hist.: FWC 8-1981, f. & ef. 2-26-81; FWC 11-1983, f. & ef. 3-24-83; FWC 19-1990, f. & cert. ef. 2-28-90; DFW 11-2008, f. & cert. ef. 2-21-08

Rule Caption: Adopts rules for agents to, under Department's control, pursue bear and cougar with dogs.

Adm. Order No.: DFW 12-2008

Filed with Sec. of State: 2-21-2008

Certified to be Effective: 2-21-08

Notice Publication Date: 9-1-2007

Rules Adopted: 635-079-0000, 635-079-0005, 635-079-0010

Subject: These rules will enable the department to appoint agents with special skills to assist the department in implementing wildlife management plans and activities including actions relating to bear and cougar.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-079-0000

Purpose

These rules implement HB 2971, enacted by the 2007 Legislative Assembly, which authorized appointment of agents, subject to the Department's direction and control, to assist the Department in its official duties by pursuing black bear and/or cougar with dogs. These rules authorize two classes of agents—1) volunteer agents and 2) private contractors hired by the Department on personal services contracts—for responding to specific conflict or management actions consistent with the Oregon cougar and bear management plans and/or to work on specific research projects.

Stat. Auth.: ORS 496.012, 496.138, 498.164
Stats. Implemented: HB 2971 (Ch.143, OL 2007)
Hist.: DFW 12-2008, f. & cert. ef. 2-21-08

635-079-0005

Selection

(1) Any person applying for appointment as a black bear and/or cougar agent for the Department must submit a completed volunteer application form providing at least the following:

- (a) the person's name, contact information and employment history;
- (b) a detailed description of the person's experience in pursuing or hunting wildlife with dogs;

(c) a detailed description of the person's experience with firearms, first aid and the use of all-terrain vehicles, four wheel drive pickups, and snowmobiles;

(d) consent to run a criminal records check on the person, including a fingerprint check;

(e) a detailed description of the person's tracking dogs, including their training history, licensing status, canine immunization records, and the locations, timing and species of wildlife the dogs have pursued;

(g) a current certified copy of his or her motor vehicle records; and

(g) a detailed description of available equipment that can be used while pursuing or hunting cougar or bear with dogs.

(2) The Department shall review the person's application materials, run state and national criminal records checks on the person, hold an in-person interview, and determine whether the person meets the following criteria:

(a) is not awaiting prosecution for and has not been convicted of any felony or any violation of the animal cruelty, animal abuse, or domestic abuse laws;

(b) is not awaiting prosecution for and has not been convicted of a wildlife violation involving the illegal take of wildlife;

(c) is not awaiting prosecution for and has not been convicted of aiding in the illegal take of wildlife;

(d) Is not awaiting prosecution for and has not been convicted of any wildlife violation involving the use of dogs;

(e) Is not awaiting prosecution for and has not been convicted of any violation involving illegal drugs or alcohol abuse;

(f) Has not had his or her hunting or fishing license suspended for a wildlife violation;

(g) would be available to respond to assignment by the Department;

(h) is skilled in the safe use of firearms, all terrain vehicles, four wheel drive pickups, and snowmobiles;

(i) has a basic understanding of first aid;

(j) understands and respects basic principles of wildlife management; and

(k) currently holds an Oregon driver's license.

(3) The Department will consider the experience level of the person for each of the criteria listed in paragraph (2) and will use that information to select individuals suitable for appointment as an agent.

(a) The Department will review any violations on the person's record.

(b) The Department retains discretion to determine how many agents to appoint and which applicants would best represent the state of Oregon.

Stat. Auth.: ORS 496.012, 496.138, 498.164
Stats. Implemented: HB 2971 (Ch.143, OL 2007)
Hist.: DFW 12-2008, f. & cert. ef. 2-21-08

635-079-0010

Appointment

(1) To appoint a person as an agent under these rules, the Department and the person must enter into a signed agreement which (at minimum):

(a) Obligates the person to act on the Department's behalf and subject to the Department's direction and control;

(b) limits the person, when acting on the Department's behalf, to implementing the Department's specific management programs, consistent with the Commission's black bear management plan or Commission's cougar management plan;

(c) Prohibits the person from engaging in any other hunting or pursuit while pursuing black bear or cougar on the Department's behalf;

(d) Obligates the person to promptly inform his or her Department supervisor of any arrest, citation or conviction since application. The appointment is automatically suspended pending disposition of any arrest or citation;

(e) Automatically terminates the appointment if the person is convicted of a felony or any violation of animal cruelty, animal abuse, or domestic abuse laws; the person is convicted of any violation involving illegal drugs or alcohol abuse; the person is convicted of any violation of the wildlife laws; or if the person can no longer legally operate motor vehicles in Oregon;

(f) Automatically terminates the appointment if the Department determines that the person is not trustworthy, fails to carefully obey all directions from the Department, or engages in conduct that reflects poorly on the Department;

(g) Authorizes the person to pursue black bear and/or cougar with dogs at the direction of the Department and in an official capacity; and

(h) Obligates the person to follow all applicable safety and health rules while operating on the Department's behalf.

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(2) An agreement with a volunteer agent shall not authorize payment of any compensation or wages to the agent except for the following:

(a) The Department may compensate the agent for vehicle fuel cost incurred while acting for the Department; and

(b) The Department may compensate the agent for dog related expenses incurred while acting for the Department.

(3) An agreement with a person as a private contractor to assist the Department with black bear and/or cougar pursuit using dogs shall provide compensation as per state contracting requirements.

(4) Before pursuing black bear or cougar on the Department's behalf, each agent shall complete an information and training session conducted by the Department. The session shall cover, at a minimum:

(a) Requirements for use of pursuit dogs, firearms, all terrain vehicles and snowmobiles;

(b) A code of conduct for volunteers working on the Department's behalf;

(c) Information regarding the humane capture and euthanasia of wildlife;

(d) Identification of specific areas and boundaries where activities will be conducted; and

(e) Identification of specific timing of when activities will be conducted for the Department.

(5) All activities of agents will be reviewed at least annually.

(6) All agreements and contracts with agents will be available for public review at the Department's main office in Salem.

(7) The Department may terminate appointment of any individual as an authorized volunteer or private contractor agent at any time or for any reason if it determines that the appointment no longer is in the best interest of the state of Oregon. Appointment as an agent conveys no rights or privileges other than those specifically outlined in the agreement or contract, all of which rights or privileges terminate immediately upon termination of the appointment of the agent.

Stat. Auth.: ORS 496.012, 496.138, 498.164
Stats. Implemented: HB 2971 (Ch.143, OL 2007)
Hist.: DFW 12-2008, f. & cert. ef. 2-21-08

Rule Caption: Modifications to the recreational Spring Chinook Season in the Columbia River.

Adm. Order No.: DFW 13-2008(Temp)

Filed with Sec. of State: 2-21-2008

Certified to be Effective: 2-25-08 thru 8-22-08

Notice Publication Date:

Rules Amended: 635-023-0125

Subject: Amended rule sets the spring Chinook fisheries in the Columbia River for 2008. The modifications detail areas and dates of harvest of salmon, steelhead, and shad in the mainstem Columbia River from the mouth at Buoy 10 upstream to McNary Dam. Revisions are consistent with action taken February 15, 2008 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-023-0125

Spring Sport Fishery

(1) The **2008 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2008 Oregon Sport Fishing Regulations**.

(2) Effective 12:01 a.m. February 25, 2008, the recreational salmonid (spring Chinook and steelhead) fishery is closed from the Columbia River mouth at Buoy 10 upstream to the I-5 Bridge.

(3) The Columbia River is open:

(a) January 1 through February 24, 2008 from the mouth at Buoy 10 upstream to the I-5 Bridge;

(b) March 16 through May 10, 2008 from the Tower Island power lines (approximately 6 miles below The Dalles Dam) upstream to McNary Dam plus the Oregon bank between Bonneville Dam and the Tower Island power lines;

(c) March 24 through April 4, 2008 from Buoy 10 upstream to Hayden Island power lines (west towers);

(d) March 16 through April 30, 2008 from Hayden Island power lines (west towers) upstream to Bonneville Dam, except on Tuesdays from March 26 through April 29, 2008 when this area is closed to angling for all species (including catch-and-release); and

(4) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line to McNary Dam from February 15 through June 15, 2008, it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

(5) Prior to May 16, 2008 the mainstem Columbia River is open for retention of adipose fin-clipped steelhead and shad during those days and seasons open for adipose fin-clipped spring Chinook, and closed for adipose fin-clipped steelhead and shad during those days and seasons closed for adipose fin-clipped spring Chinook, except angling for steelhead is allowed through March 15, 2008 from the I-5 Bridge upstream to McNary Dam.

(6) In the areas described in subsections (3)(a) through (3)(d) above, two adult adipose fin-clipped salmon or two adult adipose fin-clipped steelhead may be retained per day. In the areas described in subsections (3)(c) and (3)(d) above, the daily bag limit of two salmonids cannot include more than one Chinook per day. All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed. Catch limits for jacks remain in effect as per the 2008 Oregon Sport Fishing Regulations.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 5-17-05, cert. ef. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. 6-3-05, cert. ef. 6-4-05 thru 7-31-05; Administrative correction 11-18-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 21-2006(Temp), f. 4-13-06, cert. ef. 4-14-06 thru 5-15-06; DFW 27-2006(Temp), f. 5-12-06, cert. ef. 5-13-06 thru 6-15-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 33-2007(Temp), f. 5-15-07, cert. ef. 5-16-07 thru 7-30-07; DFW 37-2007(Temp), f. & cert. ef. 5-31-07 thru 7-30-07; DFW 39-2007(Temp), f. 6-5-07, cert. ef. 6-6-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 13-2008(Temp), f. 2-21-08, cert. ef. 2-25-08 thru 8-22-08

Rule Caption: Modifications to the Non-Indian Commercial Gill Net Sturgeon Season in the Columbia River.

Adm. Order No.: DFW 14-2008(Temp)

Filed with Sec. of State: 2-21-2008

Certified to be Effective: 2-21-08 thru 8-18-08

Notice Publication Date:

Rules Amended: 635-042-0135

Subject: Amended rule adds three additional non-Indian commercial gill net fishing periods for harvest of white sturgeon, finclipped Chinook salmon, and shad in the mainstem Columbia River from the Hayden Island power lines (west towers) upstream to the upper boundary of Zone 5 (Beacon Rock). revisions are consistent with action taken February 15, 2008 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-042-0135

Sturgeon Season

(1) White sturgeon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial salmon fishing seasons with the same fishing gear authorized for the taking of salmon.

(2) Retention of green sturgeon in all mainstem Columbia River and Select Area commercial fisheries is prohibited.

(3) White sturgeon and adipose fin-clipped salmon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size of nine inches and a maximum mesh size of 9 3/4 inches. Only white sturgeon and adipose fin-clipped salmon may be sold from this fishery. The open fishing periods are:

(a) 6:00 p.m. Tuesday January 8 to 6:00 p.m. Wednesday January 9, 2008;

(b) 6:00 p.m. Tuesday January 15 to 6:00 p.m. Wednesday January 16, 2008;

(c) 6:00 p.m. Tuesday January 22 to 6:00 p.m. Wednesday January 23, 2008;

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(d) 6:00 p.m. Tuesday January 29 to 6:00 p.m. Wednesday January 30, 2008;

(e) 6:00 p.m. Tuesday February 5 to 6:00 p.m. Wednesday February 6, 2008; and

(f) 6:00 p.m. Tuesday February 12 to 6:00 p.m. Wednesday February 13, 2008.

(4) White sturgeon, adipose fin-clipped Chinook salmon, and shad may be taken for commercial purposes from the Columbia River from the Hayden Island powerlines (west towers) upstream to the upper boundary of Zone 5 (Beacon Rock) during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size of nine inches and a maximum mesh size of 9 3/4 inches. Only white sturgeon, adipose fin-clipped Chinook salmon, and shad may be sold from this fishery. The open fishing periods are:

(a) 6:00 p.m. Thursday February 21 to noon Friday February 22, 2008;

(b) 6:00 p.m. Tuesday February 26 to noon Wednesday February 27, 2008; and

(c) 6:00 p.m. Thursday February 28 to noon Friday February 29, 2008;

(5) White sturgeon and salmon must be delivered to wholesale fish dealers, canners, or fish buyers undressed (in the round).

(6) It is *unlawful* to:

(a) Take sturgeon and salmon by angling from any vessel that is engaged in commercial fishing (including the period of time the gear is fished) or has been engaged in commercial fishing on that same day or has commercially caught sturgeon or salmon aboard;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) Keep any fish taken under a commercial license for personal use;

(d) Remove the head or tail of any white sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or canner;

(e) Sell or attempt to sell unprocessed or processed sturgeon eggs that have been taken from the Columbia River below Bonneville Dam;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale;

(g) Have in possession any white sturgeon smaller than 48 inches or larger than 60 inches in overall length;

(h) Gaff or penetrate sturgeon in any way while landing or releasing it.

(7) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in section (3) of this rule.

(8) The Sandy and Washougal rivers closed sanctuaries, described in OAR 625-042-0005, are in effect during the fishing periods described in section (4) of this rule.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; Renumbered from 635-035-0320; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 20-1982(Temp), f. & ef. 3-25-82; FWC 3-1983, f. & ef. 1-21-83; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 16-1994(Temp), f. & cert. ef. 3-3-94; FWC 3-1997, f. & cert. ef. 1-27-97; FWC 8-1997(Temp), f. & cert. ef. 2-14-97; FWC 42-1997, f. & cert. ef. 8-4-97; DFW 2-1998(Temp), f. 1-9-98, cert. ef. 1-12-98 thru 1-23-98; DFW 58-1998(Temp), f. & cert. ef. 8-4-98 thru 8-21-98; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 84-1998(Temp), f. & cert. ef. 10-22-98 thru 10-23-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 87-1998(Temp), f. & cert. ef. 11-5-98 thru 11-6-98; DFW 101-1998, f. & cert. ef. 12-24-98; DFW 7-1999(Temp), f. 2-12-99 & cert. ef. 2-15-99 thru 2-19-99; DFW 11-1999(Temp), f. 2-24-99, cert. ef. 2-25-99 thru 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; Administrative correction 11-17-99; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 8-2003(Temp), f. 1-27-03, cert. ef. 1-28-03 thru 4-1-03; DFW 10-2003(Temp), f. & cert. ef. 2-3-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 7-2004(Temp), f. & cert. ef. 2-2-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 7-2005(Temp), f. & cert. ef. 2-22-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 8-2007(Temp), f. 2-12-07, cert. ef. 2-13-07 thru 8-11-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 10-2008, f. & cert. ef. 2-11-08; DFW 14-2008(Temp), f. & cert. ef. 2-21-08 thru 8-18-08

Rule Caption: Modifications to the recreational Spring Chinook Season in the Willamette River and Tributaries.

Adm. Order No.: DFW 15-2008(Temp)

Filed with Sec. of State: 2-26-2008

Certified to be Effective: 3-1-08 thru 7-29-08

Notice Publication Date:

Rules Amended: 635-017-0090

Subject: Amended rule modifies the recreational spring Chinook retention and bag limit in the Willamette River and tributaries, including the Clackamas River upstream to North Fork Dam. Revisions are consistent with action taken February 15, 2008 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-017-0090

Inclusions and Modifications

(1) The **2008 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2008 Oregon Sport Fishing Regulations.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Friday through Monday each week. All harvest is prohibited Tuesday through Thursday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

(3) Carmen Reservoir (Linn County) is open to angling for trout all year.

(a) The daily catch limit for trout is 5 per day, minimum length is 8 inches, only 1 trout over 20 inches in length may be taken per day.

(b) Use of bait is allowed.

(4) Effective February 1, 2008 there are no size restrictions or bag limits on trout or warmwater fish in Roslyn Lake.

(a) All other General Statewide and Willamette Zone regulations as provided in the **2008 Oregon Sport Fishing Regulations** apply.

(5) Effective March 1, 2008, the daily bag limit in the Willamette River and tributaries, including the Clackamas River upstream to North Fork Dam will be two adult salmonids per day, only one of which may be a Chinook, with the exception that one additional adipose fin-clipped steelhead may be retained per day in the Willamette Basin above Willamette Falls. Only adipose fin-clipped fish may be kept. All other permanent regulations apply.

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

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

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

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 4-27-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-

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28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. & cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. & cert. ef. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. & cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. & cert. ef. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02 cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07; DFW 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; DFW 134-2007, f. 12-26-07, cert. ef. 1-1-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; DFW 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; DFW 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08

Rule Caption: 2008 Commercial Salmon and Sturgeon Fisheries for Columbia River Select Areas.

Adm. Order No.: DFW 16-2008(Temp)

Filed with Sec. of State: 2-26-2008

Certified to be Effective: 3-2-08 thru 8-28-08

Notice Publication Date:

Rules Amended: 635-042-0145, 635-042-0160, 635-042-0180

Rules Suspended: 635-042-0145(T), 635-042-0160(T), 635-042-0180(T)

Subject: Amend rules to add fishing periods to current season and set area boundaries and restrictions for upcoming commercial fishing seasons for salmon and sturgeon in the Columbia River Select Area fisheries. Modifications are consistent with the action taken February 15, 2008 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-042-0145

Youngs Bay Salmon Season

(I) 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.

(iii) Walluski Area: 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; 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 headline 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; FWC 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 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08

635-042-0160

Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes during open fishing periods described as the winter fishery and the spring fishery in paragraphs (1)(a)(A) or (1)(a)(B) of this rule in those waters of Blind Slough and Knappa Slough. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough only in paragraph (A), and the spring fishery in Blind Slough and Knappa Slough in paragraph (B). The seasons are open nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough Only:

(i) Wednesday, February 20 to Thursday, February 21, 2008; Sunday, February 24 to Monday, February 25, 2008; Wednesday, February 27 to Thursday, February 28, 2008; Sunday, March 2, to Monday, March 3, 2008; Wednesday, March 5 to Thursday, March 6, 2008; Sunday, March 9, to Monday, March 10, 2008; Wednesday, March 12 to Thursday, March 13, 2008; Sunday, March 16, to Monday, March 17, 2008; Wednesday, March 19 to Thursday, March 20, 2008; Sunday, March 23, to Monday, March 24, 2008; Wednesday, March 26 to Thursday, March 27, 2008; Sunday, March 30, to Monday, March 31, 2008; Sunday, April 6 to Monday, April 7, 2008.

(B) Blind and Knappa Sloughs:

(i) Thursday, April 17 to Friday, April 18, 2008; Monday, April 21 to Tuesday, April 22, 2008; Thursday, April 24 to Friday, April 25, 2008; Monday, April 28 to Tuesday, April 29, 2008; Thursday, May 1 to Friday, May 2, 2008; Monday, May 5 to Tuesday, May 6, 2008; Thursday, May 8 to Friday, May 9, 2008; Monday, May 12 to Tuesday, May 13, 2008; Thursday, May 15 to Friday, May 16, 2008; Monday, May 19 to Tuesday, May 20, 2008; Thursday, May 22 to Friday, May 23, 2008; Monday, May 26 to Tuesday, May 27, 2008; Thursday, May 29 to Friday, May 30, 2008; Monday, June 2 to Tuesday, June 3, 2008; Thursday, June 5 to Friday, June 6, 2008; Monday, June 9 to Tuesday, June 10, 2008; Thursday, June 12 to Friday, June 13, 2008.

(b) The fishing areas for the winter and spring seasons are:

(A) Blind Slough are those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge.

(B) From April 17 through April 29, 2008 Knappa Slough are all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

(C) From May 1 through June 13, 2008, the Knappa Slough fishing area extends downstream to the boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore.

(2) Gear restrictions are as follows:

(a) Gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted.

(A) During the winter fishery, outlined above in (1)(a)(A), it is unlawful to use a gill net having a mesh size that is less than 7-inches.

(B) During the spring fishery, outlined above in (1)(a)(B), it is unlawful to use a gill net having a mesh size that is more than 8-inches.

(3) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp),

f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp), f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04, cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 16-2006(Temp), f. 3-23-06, cert. ef. 3-26-06 thru 7-27-06; DFW 18-2006(Temp), f. 3-29-06, cert. ef. 4-2-06 thru 7-27-06; DFW 20-2006(Temp), f. 4-7-06, cert. ef. 4-9-06 thru 7-27-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 75-2006(Temp), f. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 92-2006(Temp), f. 9-1-06, cert. ef. 9-5-06 thru 12-31-06; DFW 98-2006(Temp), f. & cert. ef. 9-12-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08

635-042-0180

Deep River Select Area Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the Highway 4 Bridge.

(2) The fishing seasons are open nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours):

(a) Winter season: Monday, February 18 to Tuesday, February 19, 2008; Monday, February 25 to Tuesday, February 26, 2008; Monday, March 3 to Tuesday, March 4, 2008; Monday, March 10 to Tuesday, March 11, 2008.

(b) Spring season: Thursday, April 17 to Friday, April 18, 2008; Monday, April 21 to Tuesday, April 22, 2008; Thursday, April 24 to Friday, April 25, 2008; Monday, April 28 to Tuesday, April 29, 2008; Thursday, May 1 to Friday, May 2, 2008; Monday, May 5 to Tuesday, May 6, 2008; Thursday, May 8 to Friday, May 9, 2008; Monday, May 12 to Tuesday, May 13, 2008; Thursday, May 15 to Friday, May 16, 2008; Monday, May 19 to Tuesday, May 20, 2008; Thursday, May 22 to Friday, May 23, 2008; Monday, May 26 to Tuesday, May 27, 2008; Thursday, May 29 to Friday, May 30, 2008; Monday, June 2 to Tuesday, June 3, 2008; Thursday, June 5 to Friday, June 6, 2008; Monday, June 9 to Tuesday, June 10, 2008; Thursday, June 12 to Friday, June 13, 2008.

(3) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

(a) During the winter season, outlined above in (2)(a), it is unlawful to use a gill net having a mesh size that is less than 7-inches;

(b) During the spring season, outlined above in (2)(b) it is unlawful to use a gill net having a mesh size that is more than 8-inches.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef.

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8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 77-2006(Temp), f. 8-8-06, cert. ef. 9-4-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08

Rule Caption: Modifications to Recreational Spring Chinook Seasons in the Columbia River Select Areas.

Adm. Order No.: DFW 17-2008(Temp)

Filed with Sec. of State: 2-27-2008

Certified to be Effective: 2-27-08 thru 8-22-08

Notice Publication Date:

Rules Amended: 635-023-0125

Subject: Rule modifications add Columbia River Select Areas to a description of areas, dates, and bag limits for recreational harvest of Chinook salmon, steelhead, and shad in the Columbia River for 2008. Revisions are consistent with action taken February 15, 2008 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-023-0125

Spring Sport Fishery

(1) The 2008 Oregon Sport Fishing Regulations provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the 2008 Oregon Sport Fishing Regulations.

(2) Effective 12:01 a.m. February 25, 2008, the recreational salmonid (spring Chinook and steelhead) fishery is closed from the Columbia River mouth at Buoy 10 upstream to the I-5 Bridge.

(3) The Columbia River is open:

(a) January 1 through February 24, 2008 from the mouth at Buoy 10 upstream to the I-5 Bridge;

(b) March 16 through May 10, 2008 from the Tower Island power lines (approximately 6 miles below The Dalles Dam) upstream to McNary Dam plus the Oregon bank between Bonneville Dam and the Tower Island power lines;

(c) March 24 through April 4, 2008 from Buoy 10 upstream to Hayden Island power lines (west towers);

(d) March 16 through April 30, 2008 from Hayden Island power lines (west towers) upstream to Bonneville Dam, except on Tuesdays from March 26 through April 29, 2008 when this area is closed to angling for all species (including catch-and-release); and

(4) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line to McNary Dam from February 15 through June 15, 2008, it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

(5) Prior to May 16, 2008 the mainstem Columbia River is open for retention of adipose fin-clipped steelhead and shad during those days and seasons open for adipose fin-clipped spring Chinook, and closed for adipose fin-clipped steelhead and shad during those days and seasons closed for adipose fin-clipped spring Chinook, except angling for steelhead is allowed through March 15, 2008 from the I-5 Bridge upstream to McNary Dam.

(6) In the areas described in subsections (3)(a) through (3)(d) above, two adult adipose fin-clipped salmon or two adult adipose fin-clipped steelhead may be retained per day. In the areas described in subsections (3)(c) and (3)(d) above, the daily bag limit of two salmonids cannot include more than one Chinook per day. During the period March 24 through April 4, 2008 the daily bag limit for all open Columbia River Select Areas and the mainstem Columbia River described in subsection (3)(c) above are the same. All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed. Catch limits for jacks remain in effect as per the 2008 Oregon Sport Fishing Regulations.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 5-17-05, cert. ef. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. 6-3-05, cert. ef. 6-4-05 thru 7-31-05; Administrative correction 11-18-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 21-2006(Temp), f. 4-13-06, cert. ef. 4-14-06 thru 5-15-06; DFW 27-2006(Temp), f. 5-12-06, cert. ef. 5-13-06 thru 6-15-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 33-2007(Temp), f. 5-15-07, cert. ef. 5-16-07 thru 7-30-07; DFW 37-2007(Temp), f. & cert. ef. 5-31-07 thru 7-30-07; DFW 39-2007(Temp), f. 6-5-07, cert. ef. 6-6-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 13-2008(Temp), f. 2-21-08, cert. ef. 2-25-08 thru 8-22-08; DFW 17-2008(Temp), f. & cert. ef. 2-27-08 thru 8-22-08

Rule Caption: 2008 Commercial Shad Seasons for the Columbia River.

Adm. Order No.: DFW 18-2008(Temp)

Filed with Sec. of State: 2-27-2008

Certified to be Effective: 5-12-08 thru 11-7-08

Notice Publication Date:

Rules Amended: 635-042-0110

Subject: Amended rules sets the 2008 commercial shad seasons for the Columbia River below Bonneville Dam. Modifications are consistent with the action taken February 15, 2008 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-042-0110

Gary Island to Bonneville Dam Shad Season

(1) Shad may be taken for commercial purposes from the area of the Columbia River described in section (2) daily from 3:00 p.m. to 10:00 p.m. during the following open fishing periods:

(a) Monday, May 12 to Friday, May 16, 2008;

(b) Monday, May 19 to Friday, May 23, 2008;

(c) Tuesday, May 27 to Friday, May 30, 2008;

(d) Monday, June 2 to Friday, June 6, 2008;

(e) Monday, June 9 to Friday, June 13, 2008;

(f) Monday, June 16 to Friday, June 20, 2008.

(2) The area of the Columbia River open to fishing is from a downstream boundary of a true north/south line through the flashing red 4-second Light "50" near the Oregon bank to an upstream boundary of a line projected from a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse 1) in a straight line through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock.

(3) It is *unlawful* to use a gill net having a mesh size less than 5-3/8 inches or more than 6-1/4 inches with a breaking strength greater than a 10-pound pull, or to use a gill net other than a single wall floater net, or to use a gill net having slackers, or to use a gill net of more than 150 fathoms in length or 40 meshes in depth.

(4) Only shad may be kept or sold. All salmon, steelhead, walleye and sturgeon taken in shad nets must be immediately returned unharmed to the water.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 116(Temp), f. & ef. 6-1-77 thru 6-3-77; FWC 124(Temp), f. & ef. 6-17-77 thru 10-14-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 27-1978(Temp), f. & ef. 5-26-78 thru 9-22-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0275; FWC 6-1980, f. & ef. 1-28-80; FWC 25-1980(Temp), f. & ef. 6-13-80; FWC 1-1981, f. & ef. 1-19-81; FWC 18-1981(Temp), f. & ef. 6-10-81; FWC 6-1982, f. & ef. 1-28-82; FWC 36-1982(Temp), f. & ef. 6-11-82; FWC 2-1983, f. & ef. 1-21-83, ef. 2-1-83; FWC 21-1983(Temp), f. & ef. 6-10-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 19-1985, f. & ef. 5-1-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 16-1986(Temp), f. & ef. 5-23-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 23-1987(Temp), f. & ef. 5-20-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 10-1991, f. 2-7-91, cert. ef. 2-8-91; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 34-1992(Temp), f. 5-19-92, cert. ef. 5-20-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; FWC 6-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 36-2000(Temp), f. 6-28-00, cert. ef. 6-28-00 thru 7-1-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 39-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 45-2005(Temp), f. 5-

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17-05, cert. ef. 5-23-05 thru 10-16-05; DFW 63-2005(Temp), f. & cert. ef. 6-29-05 thru 7-31-05; Administrative correction 11-18-05; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; Administrative correction 8-22-06; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 18-2008(Temp), f. 2-27-08, cert. ef. 5-12-08 thru 11-7-08

Rule Caption: Rules to allow Capture of Peregrine Falcons for Use in Falconry.

Adm. Order No.: DFW 19-2008

Filed with Sec. of State: 2-29-2008

Certified to be Effective: 2-29-2008

Notice Publication Date: 1-1-2008

Rules Amended: 635-055-0000, 635-055-0020, 635-055-0030, 635-055-0035, 635-055-0075

Subject: Rules to allow the capture of Peregrine Falcons to be used in the practice of Falconry.

Text was erroneously deleted from the previous version filed. This correction reflects the language adopted at the Fish and Wildlife Commission hearing held on February 8, 2008.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-055-0000

Definition of Terms

For the purpose of these rules, the following definitions apply:

(1) "Captive bred" means any raptor, including eggs, hatched in captivity resulting from parents that mated in captivity, or are the progeny of artificial insemination.

(2) "Falconry" is caring for and training raptors for pursuit of game, and the sport of hunting wild game with raptors.

(3) "Indigenous raptor", for purposes of falconry, means golden eagle (*Aquila chrysaetos*), sharp-shinned hawk (*Accipiter striatus*), Cooper's hawk (*Accipiter cooperii*), northern goshawk (*Accipiter gentilis*), red-tailed hawk (*Buteo jamaicensis*), American kestrel (*Falco sparverius*), merlin (*Falco columbarius*), prairie falcon (*Falco mexicanus*), peregrine falcon (*Falco peregrinus*), gyrfalcon (*Falco rusticolus*), and great horned owl (*Bubo virginianus*).

(4) "Passage" means first year migrant raptors capable of flight.

(5) "Raptor" means any species or hybrid of the families Strigidae, Falconidae and Accipitridae.

(6) "Raptors at hack" means the intentional release of a raptor as a training technique, with the expectation of recapture after a period of time.

(7) "Take", for the purposes of these rules, means to trap, capture, or attempt to trap or capture a raptor from the wild for the purpose of falconry.

Stat. Auth.: ORS 496

Stats. Implemented: ORS 496

Hist.: FWC 170, f. 12-23-77, ef. 1-1-78; FWC 11-1983, f. & ef. 3-24-83; FWC 7-1984, f. & ef. 2-29-84; FWC 19-1990, f. & cert. ef. 2-28-90; DFW 33-2002, f. & cert. ef. 4-18-02; DFW 11-2008, f. & cert. ef. 2-21-08; DFW 19-2008, f. & cert. ef. 2-29-08

635-055-0020

Qualifications

(1) All licensed Oregon falconers shall be residents of Oregon. A resident shall have a permanent residence and falconry facilities in Oregon; however, there is no time minimum before a person can claim residency for falconry purposes. Any person falconry hunting in Oregon with a resident hunting license must satisfy the residency requirements as detailed in OAR 635-052, 635-053, 635-054 and 635-065.

(2) All falconers shall demonstrate knowledge of the care of raptors, practice of falconry, and wildlife laws and regulations pertaining to hunting and falconry by receiving a score of 80 percent or higher on a written examination approved by the U.S. Fish and Wildlife Service or by showing documented falconry experience from another state having a federally approved falconry program before receiving their first Oregon Falconry Permit. Any applicant who fails to pass an examination may take another examination no earlier than 30 days from the date of the prior examination.

(3) All falconers shall possess adequate facilities and equipment to care for raptors under their care.

(4) An applicant for a falconry license shall be one of the following:

(a) "Apprentice Falconer":

(A) Be at least fourteen 14 years of age;

(B) Be sponsored by a "Master Falconer" or, a "General Falconer" with at least three years experience. The sponsor shall supervise and guide the Apprentice Falconer on care, capture, and training of raptors and shall

submit a written recommendation to the Department when the Apprentice is qualified to become a General Falconer.

(b) "General Falconer":

(A) Be at least eighteen (18) years of age;

(B) Have at least two years experience as an "Apprentice Falconer" or documented equivalent falconry experience from a state having a federally approved falconry program.

(c) "Master Falconer":

(A) Have five years experience as a "General Falconer" or documented equivalent falconry experience from a state having a federally approved falconry program.

(5) Persons with an expired falconry license may renew the license as a General or Master Falconer if they can provide verified or verifiable documentation of the last level attained. Persons with no documentation of past falconry experience shall re-test at the apprentice level.

(6) Persons moving to Oregon from foreign countries must demonstrate knowledge of the care of raptors, practice of falconry, and wildlife laws and regulations pertaining to hunting and falconry by receiving a score of 80 percent or higher on a written examination. Foreign applicants must provide written documentation from their government of past falconry experience which details their experience level to be licensed at the General or Master levels. Persons with no documentation of past falconry experience shall re-test at the apprentice level.

Stat. Auth.: ORS 496

Stats. Implemented: ORS 496

Hist.: FWC 170, f. 12-23-77, ef. 1-1-78; FWC 11-1983, f. & ef. 3-24-83; FWC 12-1985, f. & ef. 3-6-85; FWC 19-1990, f. & cert. ef. 2-28-90; DFW 33-2002, f. & cert. ef. 4-18-02; DFW 11-2008, f. & cert. ef. 2-21-08; DFW 19-2008, f. & cert. ef. 2-29-08

635-055-0030

Limitations on Species Captured and/or Held

(1) The following restrictions are placed on the number of raptors that may be captured in Oregon and/or held for falconry, including non-indigenous species:

(a) Apprentice Falconer — may possess only one raptor, and may obtain only one replacement during any capture season. The raptor shall be an American kestrel, or Red-tailed hawk, captured from the wild under the direct supervision and accompanied by the Apprentice's sponsor. Apprentice falconers shall not take nestling raptors.

(b) General Falconer — may possess not more than two raptors, including captive bred raptors, but may obtain two replacement raptors from the wild in Oregon during a capture season. A General Falconer may capture and/or possess red-tailed hawk, American kestrel, Cooper's hawk, sharp-shinned hawk, goshawk, prairie falcon, merlin or great horned owl. A General Falconer may obtain any number of captive bred raptors so long as the number of raptors held does not exceed two. A General falconer may possess any legally acquired non-indigenous raptor and legally acquired wild captured indigenous raptors.

(c) Master Falconer — may possess not more than three raptors and may obtain two replacement raptors from the wild in Oregon during a capture season. A Master Falconer may capture and/or possess great horned owl, red-tailed hawk, American kestrel, Cooper's hawk, sharp-shinned hawk, goshawk, prairie falcon, merlin, gyrfalcon, peregrine falcon or golden eagle. A Master Falconer may obtain any number of captive bred raptors so long as the number of raptors held does not exceed three. A Master falconer may possess any legally acquired non-indigenous raptor and legally acquired wild captured indigenous raptors.

(2) Young raptors of the year shall be taken (unless otherwise noted e.g. by permit) on weekends only from the third Saturday in May through the third Sunday in October, and then daily through the last day of February of the following year. This period comprises the "capture season".

(4) Any adult raptor inadvertently taken must be immediately released.

(5) Only the following raptor species and number of each shall be taken in the state during the capture season unless otherwise specified:

(A) Red-tailed hawk, American kestrel, Cooper's hawk, sharp-shinned hawk and great horned owl — unlimited and statewide except that owls may be taken as nestlings only.

(B) Goshawk — unlimited and statewide except that no nestling goshawks may be taken in the area north of the Umpqua River and west of Interstate 5. Passage goshawks may be taken statewide.

(C) Prairie falcon — unlimited and statewide except that Wasco, Gilliam, Umatilla, Morrow, Sherman, Jackson and Josephine counties are closed to take of prairie falcons.

(D) Merlin — unlimited and statewide except no nestling merlins may be taken.

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(E) Gyrfalcon — only 3 gyrfalcons may be captured during a capture season. Gyrfalcons may be captured statewide. Gyrfalcon capture permits are issued to Master Falconers only and an individual falconer may not capture more than one gyrfalcon per capture season. All gyrfalcon capture permit holders will be notified when the quota has been reached. No take of gyrfalcons is authorized for non-resident falconers.

(6) Golden eagle — unlimited, capture authorized for counties east of the crest of the Cascade Mountain range only. Golden eagles may be captured, imported and/or used for falconry only in accordance with Federal falconry standards as detailed in 50 CFR § 22.24.

(7) Peregrine falcons maybe taken statewide. By January 1 of each year, the Commission will establish allowable take of peregrine falcons, not to exceed five percent of the estimated annual productivity of young peregrine falcons in Oregon, as required by U.S. Fish and Wildlife Service in its Environmental Assessment for the Take of Nestling Peregrine Falcons (Federal Register March 10, 2004, Volume 69, Number 47, page 11455).

(8) The possession of legally acquired non-indigenous raptors listed as a migratory bird in 50 CFR §10.13 is allowed. Only indigenous raptor species, raptors listed in 50 CFR §10.13 and raptors classified as non-controlled or controlled in the Oregon Wildlife Integrity Rules (OAR 635-056) are allowed. The possession for falconry purposes of hybrid raptors of species listed in 50 CFR §10 are allowed.

Stat. Auth.: ORS 496.012, 496.112, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.112, 496.138, 496.146 & 496.162
Hist.: FWC 170, f. 12-23-77, ef. 1-1-78; FWC 9-1980, f. & ef. 2-27-80; FWC 8-1981, f. & ef. 2-26-81; FWC 11-1983, f. & ef. 3-24-83; FWC 7-1984, f. & ef. 2-29-84; FWC 19-1990, f. & cert. ef. 2-28-90; FWC 30-1993, f. & cert. ef. 5-5-93; DFW 33-2002, f. & cert. ef. 4-18-02; DFW 11-2008, f. & cert. ef. 2-21-08; DFW 19-2008, f. & cert. ef. 2-29-08

635-055-0035

Capture and Transportation of Raptors

A raptor capture permit is required prior to capturing or attempting to capture any raptor. A non-resident falconer from a state having a federally approved falconry program may obtain a capture permit for a red-tailed hawk, Cooper's hawk, sharp-shinned hawk, prairie falcon, peregrine falcon, great horned owl, golden eagle or American kestrel only. All non-resident applications must include copies of current state and federal falconry permits. All applicants for golden eagle capture must include a copy of the federal authorization to take golden eagles. Only 20 non-resident capture permits will be issued in total each capture season. All non-resident capture permits will be issued on a first come first served basis.

(1) An application fee of \$10 will be charged for each capture permit allowing the capture of one raptor per permit.

(2) Except for take of nestling (eyas) peregrine falcons, the Department will issue capture permits in the order applications are received. The permit process will begin January 1st of each year, and applicants must hold a valid Oregon falconry license. The category of species shall be listed on the permit (e.g. "golden eagle", "gyrfalcon", "eyas peregrine falcon", or "other raptor") and the falconer is authorized to take only one raptor from the category specified. A falconer may apply for a capture permit in more than one category. The falconer whose name appears on the permit must do the capturing; the permit is not transferable.

(3) Capture permits for nestling peregrine falcons may be submitted to the department beginning January 1st and received no later than April 1st of each year, and available capture permits will be allocated on a first come, first served basis. The Department will cease to issue permits as soon as the five percent quota has been met. Of the number of permits available for issuance annually, the Department will make one such permit available to nonresidents. Each permit will include conditions crafted by the Department on a case by case basis to address the particular proposal to capture peregrine falcons. Such conditions may include, but are not limited to, requirements to protect the safety of falconers and other humans during capture of peregrine falcons, and shall specify where the permittee may capture peregrine falcons. The following general conditions apply to all peregrine falcon capture permits:

(a) Young falcons may be removed from their eyries from May 15th to June 30th daily and when only between 15 and 24 days of age. At least one nestling must be left in each eyrie prior to fledging. A young (fledgling) peregrine falcon may be taken up to 30 days after leaving the nest.

(b) Take of passage peregrine is unlawful.

(c) Each falconer who takes a peregrine falcon from the wild must report the sex and precise capture location to the Department and the U.S. Fish and Wildlife Service within 5 days after. If the falconer later determines that the sex of any peregrine falcon taken was reported incorrectly, then the falconer must submit a corrected report as soon as possible after discovering the error.

(d) Falconers must band each peregrine falcon taken with a band provided by the Department.

(e) After a captured falcon reaches 30 days of age, the falconer must pluck breast feathers from the falcon and submit them to the U.S. Fish and Wildlife Service, along with a written record of the precise location of where the bird was taken from in the wild. The address for submission is U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, Virginia 22203-1610.

(4) Upon taking the raptor authorized, the permittee shall immediately validate the permit by recording the date, species, sex, county, and capture method and signing his/her name in the space provided. At the time of capture, the permittee shall affix the permanent plastic band, issued with the permit, to one leg of the bird. Within five business days of capture, the permittee shall take the bird to a Department office to have the permit certified.

(5) Lost, raptors at hack, or captive bred raptors may be retrapped at anytime without a capture permit. All other raptors captured shall be immediately released.

(6) Exportation of wild caught raptors — No raptor taken from the wild in Oregon shall be transferred to another person residing outside the state except those Oregon wild caught raptors held for six months or longer may be transferred to another person residing outside the state.

(7) An Oregon licensed falconer is allowed to retain legally captured raptors in their possession if they move from Oregon.

(8) Falconers are responsible for treatment and rehabilitation costs of raptors taken for falconry and injured during trapping efforts.

Stat. Auth.: ORS 496.012, 496.112, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.112, 496.138, 496.146 & 496.162
Hist.: FWC 170, f. 12-23-77, ef. 1-1-78; FWC 9-1980, f. & ef. 2-27-80; FWC 8-1981, f. & ef. 2-26-81; FWC 14-1982, f. & ef. 2-25-82; FWC 11-1983, f. & ef. 3-24-83; FWC 8-1986, f. & ef. 3-6-86; FWC 19-1990, f. & cert. ef. 2-28-90; FWC 40-1991, f. & cert. ef. 4-24-91; FWC 33-1992(Temp), f. & cert. ef. 5-11-92; FWC 116-1992, f. & cert. ef. 10-28-92; FWC 30-1993, f. & cert. ef. 5-5-93; DFW 33-2002, f. & cert. ef. 4-18-02; DFW 11-2008, f. & cert. ef. 2-21-08; DFW 19-2008, f. & cert. ef. 2-29-08

635-055-0075

Disposition of Accidentally Killed Wildlife

Any licensed falconer, whose raptor accidentally kills wildlife during closed season, or of the wrong species or sex, shall promptly turn in the wildlife to the Department, or Oregon State Police.

Stat. Auth.: ORS 496
Stats. Implemented: ORS 496
Hist.: FWC 8-1981, f. & ef. 2-26-81; FWC 11-1983, f. & ef. 3-24-83; FWC 19-1990, f. & cert. ef. 2-28-90; DFW 11-2008, f. & cert. ef. 2-21-08; DFW 19-2008, f. & cert. ef. 2-29-08

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Rule Caption: 2008 Tribal Winter Commercial Gill Net Fishery for Zone 6 of the Columbia River.

Adm. Order No.: DFW 20-2008(Temp)

Filed with Sec. of State: 2-28-2008

Certified to be Effective: 2-29-08 thru 7-28-08

Notice Publication Date:

Rules Amended: 635-041-0065

Subject: Amended rule modifies the 2008 winter commercial treaty Indian fisheries in Columbia River above Bonneville Dam (Zone 6). Modification are consistent with action taken February 27, 2008 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-041-0065

Winter Salmon Season

(1) Chinook salmon, steelhead, shad, sturgeon, walleye and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, from 6:00 a.m. February 1 to 6:00 p.m. March 21, 2008.

(a) Effective 6:00 p.m. Friday, February 29, 2008 Bonneville Pool will close to commercial harvest for sale of white sturgeon;

(b) Effective 6:00 p.m. Monday, March 3, 2008 The Dalles Pool will close to commercial harvest for sale of white sturgeon.

(2) There are no mesh size restrictions.

(3) Closed areas as set forth in OAR 635-041-0045 remain in effect with the exception of Spring Creek Hatchery sanctuary.

(4) White sturgeon between 48-60 inches in length in The Dalles and John Day pools and white sturgeon between 42-60 inches in the Bonneville Pool may be sold or kept for subsistence use, except in the areas and periods described in subsections (1)(a) and (1)(b) above.

(5) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 183.325 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 14-2007(Temp), f. & cert. ef. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-21-08 thru 7-28-08; DFW 20-2008(Temp) f. 2-28-08, cert. ef. 2-29-08 thru 7-28-08

Rule Caption: Modified 2008 Tribal Winter Commercial Gill Net Fishery for Zone 6 of the Columbia River.

Adm. Order No.: DFW 21-2008(Temp)

Filed with Sec. of State: 3-5-2008

Certified to be Effective: 3-5-08 thru 7-28-08

Notice Publication Date:

Rules Amended: 635-041-0065

Subject: Amended rule modifies the 2008 winter commercial Treaty Indian Fisheries in Columbia River above Bonneville Dam (Zone 6). Modifications are consistent with action taken March 5, 2008 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-041-0065

Winter Salmon Season

(1) Chinook salmon, steelhead, shad, sturgeon, walleye and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, from 6:00 a.m. February 1 to 6:00 p.m. March 21, 2008.

(a) Effective 6:00 p.m. Friday, February 29, 2008 Bonneville Pool will close to commercial harvest for sale of white sturgeon;

(b) Effective 6:00 p.m. Monday, March 3, 2008 The Dalles Pool will close to commercial harvest for sale of white sturgeon.

(A) Effective March 5, 2008 sturgeon between 48–60 inches in length taken for commercial purposes in The Dalles pool before 6:00 p.m. Monday, March 3, 2008 may be sold until 2:00 p.m. Wednesday, March 5, 2008.

(2) There are no mesh size restrictions.

(3) Closed areas as set forth in OAR 635-041-0045 remain in effect with the exception of Spring Creek Hatchery sanctuary.

(4) White sturgeon between 48–60 inches in length in The Dalles and John Day pools and white sturgeon between 42–60 inches in the Bonneville Pool may be sold or kept for subsistence use, except in the areas and periods described in subsections (1)(a) and (1)(b) above.

(5) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-

1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 14-2007(Temp), f. & cert. ef. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-21-08 thru 7-28-08; DFW 20-2008(T) f. 2-28-08, cert. ef. 2-29-08 thru 7-28-08; DFW 21-2008(Temp), f. & cert. ef. 3-5-08 thru 7-28-08

Rule Caption: Closure of Columbia River Zone 6 Tribal Winter Commercial Gill Net Fishery.

Adm. Order No.: DFW 22-2008(Temp)

Filed with Sec. of State: 3-7-2008

Certified to be Effective: 3-10-08 thru 7-28-08

Notice Publication Date:

Rules Amended: 635-041-0065

Rules Suspended: 635-041-0065(T)

Subject: Amended rule closes the 2008 winter Treaty Indian commercial gill net sturgeon fisheries in Columbia River above Bonneville Dam (Zone 6) effective at 6:00 p.m. Monday, March 10, 2008. Sales of fish caught prior to this closure are allowed. Modification are consistent with action taken March 7, 2008 by the Columbia River Compact.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-041-0065

Winter Salmon Season

(1) Chinook salmon, steelhead, shad, sturgeon, walleye and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, from 6:00 a.m. February 1 to 6:00 p.m. March 21, 2008.

(a) Effective 6:00 p.m. Friday, February 29, 2008 Bonneville Pool will close to commercial harvest for sale of white sturgeon;

(b) Effective 6:00 p.m. Monday, March 3, 2008 The Dalles Pool will close to commercial harvest for sale of white sturgeon;

(A) Effective March 5, 2008 sturgeon between 48–60 inches in length taken for commercial purposes in The Dalles pool before 6:00 p.m. Monday, March 3, 2008 may be sold until 2:00 p.m. Wednesday, March 5, 2008.

(c) Effective 6:00 p.m. Monday, March 10, 2008 the John Day Pool will close to commercial harvest for sale of white sturgeon;

(A) Sales of white sturgeon caught prior to 6:00 p.m. Monday, March 10, 2008 may be sold.

(2) There are no mesh size restrictions.

(3) Closed areas as set forth in OAR 635-041-0045 remain in effect with the exception of Spring Creek Hatchery sanctuary.

(4) White sturgeon between 48–60 inches in length in The Dalles and John Day pools and white sturgeon between 42–60 inches in the Bonneville Pool may be sold or kept for subsistence use, except in the areas and periods described in subsections (1)(a) through (1)(c) above.

(5) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

(a) Following the closure of commercial harvest for sale as described in subsections (1)(a) through (1)(c) above, fish caught in the platform and hook-and-line fishery may be retained for subsistence purposes only.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-

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20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 thru 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 14-2007(Temp), f. & cert. ef. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 20-2008(T) f. 2-28-08, cert. ef. 2-29-08 thru 7-28-08; DFW 21-2008(Temp), f. & cert. ef. 3-5-08 thru 7-28-08; DFW 22-2008(Temp), f. 3-7-08, cert. ef. 3-10-08 thru 7-28-08

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Rule Caption: Sport Sturgeon Fishery Closed In Columbia River Between The Dalles and John Day Dams.

Adm. Order No.: DFW 23-2008(Temp)

Filed with Sec. of State: 3-12-2008

Certified to be Effective: 3-15-08 thru 9-10-08

Notice Publication Date:

Rules Amended: 635-023-0095

Subject: Amend rule to prohibit retention of sturgeon in the Columbia River and tributaries between The Dalles Dam and John Day Dam. Revision is consistent with Joint State Action taken by the states of Oregon and Washington on March 11, 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) 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.

(10) Retention of green sturgeon is prohibited all year in all areas.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08

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Rule Caption: Oregon Ocean Commercial Salmon Fisheries Remain Closed.

Adm. Order No.: DFW 24-2008(Temp)

Filed with Sec. of State: 3-13-2008

Certified to be Effective: 3-15-08 thru 9-10-08

Notice Publication Date:

Rules Amended: 635-003-0004

Subject: Amended rule keeps closed the Oregon ocean commercial salmon fishery previously scheduled to open on March 15, 2008. These modification are consistent with action taken by the National Marine Fisheries Service (NMFS), in consultation with the Pacific Fishery Management Council (PFMC).

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-003-0004

Inclusions and Modifications

(1) OAR 635-003-0005 through 635-003-0076 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart H**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart H**, provides requirements for commercial salmon fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) This rule contains requirements which modify commercial salmon fishing regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean commercial salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations (CFR, Title 50, Part 660, Subpart H)**.

(4) General Requirements, Definitions, Restrictions or Exceptions: Vessels prevented by unsafe weather conditions or mechanical problems from meeting management area landing restrictions, must notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. Notification shall include the vessel name, port where delivery will be made, approximate number of salmon (by species) on board, and estimated time of arrival.

(5) The Oregon ocean commercial salmon fishery is closed until further notice.

(6) Humbug Mountain, Oregon, to Humboldt South Jetty: When the fishery is closed north of the Oregon/California border and open to the south, vessels with fish on board taken in the open area may request authorization to temporarily moor in Brookings, Oregon, prior to landing in California. Such vessels shall first notify the Chetco River Coast Guard Station via VHF Channel 22A between the hours of 0500 and 2200. Proper notification shall include the vessel name, number of fish on board, and estimated time of arrival.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 40-1995(Temp), f. & cert. ef. 5-18-95; FWC 62-1995(Temp), f. 7-27-95, cert. ef. 7-28-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 26-1996(Temp), f. 5-16-96, cert. ef. 5-17-96; FWC 31-1996(Temp), f. & cert. ef. 6-4-96; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 33-1997(Temp), f. & cert. ef. 5-28-97; FWC 44-1997(Temp), f. & cert. ef. 8-13-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 36-1998(Temp), f. 5-12-98, cert. ef. 5-13-98 thru 5-15-98; DFW 38-1998(Temp), f. & cert. ef. 5-15-98 thru 6-15-98; DFW 39-1998(Temp), f. 5-19-98, cert. ef. 5-20-98 thru 5-23-98; DFW 44-1998(Temp), f. 6-1-98, cert. ef. 6-2-98 thru 6-4-98; DFW 64-1998(Temp), f. 8-14-98, cert. ef. 8-15-98 thru 8-21-98; DFW 65-1998(Temp), f. & cert. ef. 8-21-98 thru 8-31-98; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-

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99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 45-2000(Temp), f. 8-10-00, cert. ef. 8-11-00 thru 8-31-00; DFW 46-2000(Temp), f. 8-10-00, cert. ef. 8-10-00 thru 9-30-00; DFW 49-2000(Temp), f. 8-17-00, cert. ef. 8-18-00 thru 9-30-00; DFW 56-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 9-30-00; DFW 59-2000(Temp), f. & cert. ef. 9-6-00 thru 9-30-00; DFW 73-2000(Temp), f. 10-26-00, cert. ef. 10-28-00 thru 11-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 48-2001(Temp), f. 6-14-01, cert. ef. 6-15-01 thru 6-30-01; DFW 58-2001(Temp), f. 7-18-01, cert. ef. 7-20-01 thru 9-30-01; DFW 67-2001(Temp), f. 8-2-01, cert. ef. 8-3-01 thru 9-30-01; DFW 69-2001(Temp), f. & cert. ef. 8-8-01 thru 9-30-01; DFW 74-2001(Temp), f. & cert. ef. 8-17-01 thru 9-30-01; DFW 83-2001(Temp), f. 8-30-01, cert. ef. 8-31-01 thru 9-30-01; DFW 22-2002(Temp), f. 3-19-02, cert. ef. 3-20-02 thru 4-30-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 58-2002(Temp), f. 6-6-02, cert. ef. 6-7-02 thru 6-30-02; DFW 65-2002(Temp), 6-27-02, cert. ef. 7-1-02 thru 12-27-02; DFW 72-2002(Temp), f. 7-11-02 cert. ef. 7-12-02 thru 12-31-02; DFW 76-2002(Temp), f. 7-25-02, cert. ef. 7-26-02 thru 12-31-02; DFW 77-2002(Temp), f. & cert. ef. 7-26-02 thru 12-31-02; DFW 84-2002(Temp), f. 8-8-02, cert. ef. 8-9-02 thru 12-31-02; DFW 86-2002(Temp), f. & cert. ef. 8-9-02 thru 12-31-02; DFW 92-2002(Temp), f. & cert. ef. 8-22-02 thru 12-31-02; DFW 101-2002(Temp), f. & cert. ef. 9-9-02 thru 12-31-02; DFW 111-2002(Temp), f. 10-8-02, cert. ef. 10-14-02 thru 12-31-02; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 47-2003(Temp), f. 6-5-03, cert. ef. 6-6-03 thru 6-30-03; Administrative correction, 2-18-05; DFW 10-2005(Temp), f. 3-2-05, cert. ef. 3-15-05 thru 4-30-05; DFW 17-2005(Temp), f. & cert. ef. 3-15-05 thru 4-15-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 13-2006(Temp), f. 3-14-06, cert. ef. 3-15-06 thru 4-30-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 78-2007(Temp), f. & cert. ef. 8-20-07 thru 8-31-07; DFW 79-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 9-13-07; DFW 85-2007(Temp), f. 9-5-07, cert. ef. 9-10-07 thru 9-13-07; Administrative correction 9-16-07; DFW 24-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08

Rule Caption: Oregon Ocean Sport Salmon Fisheries Remain Closed.

Adm. Order No.: DFW 25-2008(Temp)

Filed with Sec. of State: 3-13-2008

Certified to be Effective: 3-15-08 thru 9-10-08

Notice Publication Date:

Rules Amended: 635-013-0004, 635-013-0009, 635-014-0090

Subject: Amended rules to keep closed all Oregon ocean sport salmon fisheries previously scheduled to open on March 15, 2008. These modifications are consistent with action taken by the National Marine Fisheries Service (NMFS), in consultation with the Pacific Fishery Management Council (PFMC).

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-013-0004

Inclusions and Modifications

(1) OAR 635-013-0005 through 635-013-0009 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subparts A and H**, and the **2008 Oregon Sport Fishing Regulations**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**, and the **2008 Oregon Sport Fishing Regulations** contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the published federal regulations and the **2008 Oregon Sport Fishing Regulations**. This means that persons must consult not only the federal regulations and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations (CFR, Title 50, Part 660, Subparts A and H)**.

(4) The Oregon ocean sport salmon fishery is closed until further notice.

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

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

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

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 63-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 16-2001(Temp),

f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; DFW 99-2002(Temp), f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; DFW 78-2003(Temp), f. 8-14-03, cert. ef. 8-20-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; DFW 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; DFW 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 81-2005(Temp), f. 7-25-05, cert. ef. 7-29-05 thru 12-31-05; DFW 103-2005(Temp), f. 9-7-05, cert. ef. 9-9-05 thru 12-31-05; DFW 106-2005(Temp), f. 9-14-05, cert. ef. 9-17-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 67-2006(Temp), f. 7-25-06, cert. ef. 8-11-06 thru 12-31-06; DFW 87-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 12-31-06; DFW 90-2006(Temp), f. 8-25-06, cert. ef. 8-26-06 thru 12-31-06; Administrative correction 1-16-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 80-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 12-31-07; DFW 81-2007(Temp), f. 8-31-07, cert. ef. 9-2-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08

635-013-0009

Tillamook Terminal Area Ocean Fishery

(1) The Pacific Ocean waters inside an area south of Twin Rocks (45°35'54" N. Lat.) and north of Pyramid Rock (45°29'48" N. Lat.) and seaward three nautical miles offshore are closed for Chinook salmon until further notice.

(2) A rectangular area offshore is closed to salmon angling for fin-clipped Chinook salmon until further notice. This rectangular area extends from twin Rocks (45°35'54" N. Lat.) to Pyramid Rock (45°29'48" N. Lat.) inside the 15 fathom depth contour.

(3) During the open season for adipose fin-clipped coho salmon in the ocean, the Terminal Area and the rectangular Control Zone described in sections (2) and (3) of this rule are closed to angling for salmon consistent with federal sport salmon management measures for the area from Cape Falcon to Humburg Mountain.

(4) During the period August 1-December 31, in the area described in sections (2) and (3), no more than two adult salmon may be retained per day, no more than four adult Chinook salmon may be retained in any seven consecutive days, and no more than 10 adult Chinook salmon may be retained per season. Adult Chinook salmon catch limits include, in aggregate, salmon taken in Tillamook, Nehalem, and Nestucca bays and tributaries (see OAR 635-014-0090). For purposes of this rule, adult salmon are Chinook having a length greater than 24 inches.

(5) No more than two single-point, single-shank barbless hooks are required in the ocean adipose fin-clipped coho salmon fishery and in the ocean outside the Terminal Area at all times.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 45-1983(Temp), f. & ef. 9-16-84; FWC 57-1984(Temp), f. & ef. 9-15-84; FWC 64-1984(Temp), f. & ef. 9-21-84; FWC 59-1985(Temp), f. & ef. 9-13-85; FWC 59-1986(Temp), f. & ef. 9-19-86; FWC 76-1987, f. & ef. 9-15-87; FWC 84-1988, f. & cert. ef. 9-9-88; FWC 83-1989, f. 8-31-89, cert. ef. 9-16-89; FWC 86-1990, f. 8-24-90, cert. ef. 9-1-90; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08

635-014-0090

Inclusions and Modifications

(1) The **2008 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2008 Oregon Sport Fishing Regulations**.

(2) The Tillamook Bay Spring Chinook Terminal Area (ocean) fishery, previously scheduled to open March 15, 2008 is closed until further notice.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98;

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DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 53-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; DFW 64-2006(Temp), f. 7-17-06, cert. ef. 8-1-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 63-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08

Department of Forestry Chapter 629

Rule Caption: Adopting the AG's Model Rules of Procedure — Board and Department of Forestry.

Adm. Order No.: DOF 1-2008

Filed with Sec. of State: 3-6-2008

Certified to be Effective: 3-7-08

Notice Publication Date:

Rules Amended: 629-001-0005

Subject: Adopting the Model Rules of Procedure under the Administrative Procedures Act promulgated by the Oregon Attorney General effective January 1, 2006.

Rules Coordinator: Gayle Birch—(503) 945-7210

629-001-0005

Model Rules of Procedure

The Model Rules of Procedure under the Administrative Procedures Act, promulgated by the Attorney General effective January 1, 2008 are hereby adopted as the rules of procedures of the Board of Forestry and the State Forester.

[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 Forestry.]

Stat. Auth.: ORS 526.016(4) & 526.041

Stats. Implemented: ORS 183.341

Hist.: FB 27, f. 11-12-71, ef. 12-1-71; FB 34, f. 10-19-73, ef. 11-11-73; FB 46, f. & ef. 4-19-76; FB 4-1978, f. & ef. 3-13-78; FB 1-1980, f. & ef. 1-9-80; FB 8-1980, f. & ef. 3-20-80; FB 1-1982(Temp), f. & ef. 2-8-82; FB 2-1982, f. & ef. 3-3-82; FB 1-1984, f. & ef. 1-6-84; FB 5-1986, f. & ef. 6-17-86; FB 6-1988, f. & cert. ef. 9-9-88; FB 3-1992, f. & cert. ef. 3-10-92; FB 1-1994, f. & cert. ef. 3-11-94; FB 1-1996, f. & cert. ef. 3-13-96; DOF 3-1998, f. 3-10-98, cert. ef. 4-22-98; DOF 4-2000, f. 10-25-00, cert. ef. 10-31-00; DOF 1-2002, f. & cert. ef. 3-13-02; DOF 6-2004, f. & cert. ef. 6-10-04; DOF 3-2006, f. & cert. ef. 3-15-06; DOF 1-2008, f. 3-6-08, cert. ef. 3-7-08

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

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

Adm. Order No.: SSP 4-2008(Temp)

Filed with Sec. of State: 2-22-2008

Certified to be Effective: 2-22-08 thru 7-28-08

Notice Publication Date:

Rules Amended: 461-120-0125, 461-135-0082, 461-135-0900

Subject: 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 OAR 461-135-0900 about specific requirements for the

Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs are being amended to comply with Section 1244 of Public Law 110-181 (the National Defense Authorization Act for Fiscal Year 2008) by changing the eligibility period for Iraqi 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 from six months to eight months.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-120-0125

Alien Status; Not REF or REFM

(1) For purposes of this chapter of rules, an individual is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division†C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) In all programs except the Food Stamp program(a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(i) In the Food Stamp program(a non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent(s) family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(2) A person meets the alien status requirements if he or she is one of the following:

(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the ERDC and TANF programs, an individual meets the alien status requirements if he or she is one of the following:

(a) An individual who is a qualified non-citizen.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(d) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(e) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(f) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

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(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month

(4) In the BCCM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs, a qualified non-citizen meets the alien status requirements if he or she satisfies one of the following situations:

(a) Was a qualified non-citizen before August 22, 1996.

(b) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified-noncitizen status was obtained. An individual is not continuously present in the United States if he or she is absent from the United States for more than 30 consecutive days or for a total of more than 90 days.

(c) Is an individual granted any of the following alien statuses:

(A) Refugee (under section 207 of the INA).

(B) Asylum (under section 208 of the INA).

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(H) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(I) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(d) Meets the alien status requirements in section (2), (7), or (8) of this rule.

(e) In the OSIPM program, is receiving SSI benefits.

(f) In the QMB program, is receiving SSI and Medicare Part A benefits.

(5) In the GA and GAM programs, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee (under section 207 of the INA).

(B) Asylum (under section 208 of the INA).

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking

Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(c) An individual who meets one of the alien status requirements in section (2) or (7) of this rule.

(d) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(e) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(6) In the OSIP program, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) A qualified non-citizen who physically entered the United States on or after August 22, 1996, has had the qualified non-citizen status for at least five years, and has forty qualifying quarters of coverage as defined in section (10) of this rule.

(c) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee (under section 207 of the INA).

(B) Asylum (under section 208 of the INA).

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(d) An individual receiving SSI benefits.

(e) An individual who meets one of the alien status requirements in section (2) or (7) of this rule.

(f) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(g) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

(A) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(B) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(7) In all programs except ERDC and TANF, a qualified non-citizen meets the alien status requirement if he or she is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. (5303A(d).

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(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of an individual described in subsection (a) or (b) of this section.

(d) In the FS program, a qualified non-citizen who meets the requirement in section (10) of this rule.

(8) Except as provided in sections (2), (3)(e), (4), (5), and (7) of this rule, a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996:

(a) Is ineligible for the BCCM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

(b) Meets the alien status requirement following the five-year period.

(9) In the FS program, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual granted any of the following alien statuses (

(A) Refugee (under section 207 of the INA.

(B) Asylum (under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(H) Iraqi aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of eight months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(iii) There is no eligibility past September 30, 2008, even if the eight month limit has not been reached.

(I) Afghan aliens granted special immigrant status (SIV) under section 101(a)(27) of the Immigration and Nationality Act. Such individuals meet the alien status requirements for a maximum of six months as follows:

(i) If the individual enters the United States with the special immigrant status, the month that the individual enters the United States counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the United States, then the month in which the special immigrant status was granted counts as the first month.

(iii) There is no eligibility past September 30, 2008, even if the six month limit has not been reached.

(b) A qualified non-citizen under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.

(f) A qualified non-citizen who has a disability, as defined in OAR 461-001-0015.

(10) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the FS program, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means-tested benefits include FS, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage, may be provisionally certified for food stamp benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for food stamp benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

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

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2004(Temp), f. & cert. ef. 4-9-04 thru 6-30-04; SSP 14-2004(Temp), f. & cert. ef. 5-11-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 3-2008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 4-2008(Temp), f. & cert. ef. 2-22-08 thru 7-28-08

461-135-0082

Eligibility for Refugees

(1) Clients are eligible for the Refugee Case Services Program if they:

(a) Have an alien status listed in OAR 461-120-0120;

(b) Entered the United States on or after October 1, 1997;

(c) Live in Clackamas, Multnomah or Washington county;

(d) With the exception of Afghan special immigrants, have resided in the United States less than eight months or have been granted asylum within the last eight months. The month in which the refugee was admitted to the United States as a refugee, or was granted asylum, counts as the first month. Afghan special immigrants must have resided in the United States for six months or less. The month in which the special immigrant was admitted to the United States as a special immigrant counts as the first month. If a special immigrant was granted special immigrant status after having already entered the United States, then the month that the status was granted counts as the first month;

(e) Meet the eligibility requirements contained in OAR 461-193-0000 through 461-193-1380.

(2) Clients who are eligible for the Refugee Case Services program are not eligible for TANF.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 3-2008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 4-2008(Temp), f. & cert. ef. 2-22-08 thru 7-28-08

461-135-0900

Specific Requirements; REF, REFM

(1) In addition to the eligibility requirements in other rules in Chapter 461 of the Oregon Administrative Rules, an individual must meet all of the requirements in this rule to be eligible for the REF and REFM programs.

(2) An individual must meet the alien status requirements of OAR 461-120-0120, except a child (see OAR 461-001-0000) born in the United States to an REF or REFM client meets the alien status requirements for the REF and REFM programs as long as each parent (see OAR 461-001-0000) in the household group (see OAR 461-110-0210) meets the alien status requirements of OAR 461-120-0120.

(3) An individual is not eligible to receive REF and REFM if the individual is a full-time student of higher education, unless such education is part of a cash assistance case plan. Any education or training allowable under an approved case plan must be less than one year in length. For the

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purposes of this rule, "higher education" means education that meets the requirements of one of the following subsections:

(a) Public and private universities and colleges and community colleges that offer degree programs regardless of whether a high school diploma is required for the program. However, GED, ABE, ESL and high school equivalency programs at these institutions are not considered higher education.

(b) Vocational, technical, business, and trade schools that normally require a high school diploma or equivalency certificate for enrollment in the curriculum or in a particular program at the institution. However, programs at those institutions that do not require the diploma or certificate are not considered higher education.

(4) Eligibility for REF and REFM is limited to the first eight months in the United States, with the exception of Afghan special immigrants limited to six months in the United States:

(a) For an individual who meets the alien status requirements of OAR 461-120-0120(1), (3), (4), or (5), the month that the individual enters the U.S. counts as the first month.

(b) For an individual who meets the alien status requirements of OAR 461-120-0120(2), (6), or (7), the month that the individual was granted the individual's status counts as the first month.

(c) For an individual who meets the alien status requirements of OAR 461-120-0120(8):

(i) If the individual enters the U.S. with the special immigrant status, the month that the individual enters the U.S. counts as the first month.

(ii) If the individual is granted special immigrant status after they have already entered the U.S., then the month in which the special immigrant status was granted counts as the first month.

(d) Months in the United States are counted as whole months. There is no prorating of months.

(5) For an individual who meets the requirements of section (4) of this rule:

(a) When the individual resides in Clackamas, Multnomah, or Washington counties:

(A) The individual is not eligible to receive REF, TANF, or TANF-related employment services through the Department. To receive benefits, the individual is required to participate in the Refugee Case Service Project (RCSP). This individual is referred to their local resettlement agency to be enrolled in RCSP and receives all other Department services through the individual's local Department office.

(B) An individual who no longer meets the requirements of section (4) of this rule is no longer eligible to receive cash or case management services through RCSP. If this individual has been in the United States for 12 months or less, with the exception of Iraqi and Afghan special immigrants, the individual is referred to the New Arrival Employment Services contractor for employment services. Iraqi special immigrants are limited to no more than eight months and Afghan special immigrants are limited to no more than six months.

(b) When the individual resides in counties other than Clackamas, Multnomah, and Washington:

(A) RCSP is not available. The individual is served at the individual's local Department office.

(B) For an individual who meets the eligibility requirements of the MAA, MAF, or TANF programs, the MAA, MAF, and TANF benefits are prior resources.

(C) An individual is eligible for the REF and REFM programs if the individual:

(i) Does not meet the eligibility requirements of at least one of the MAA, MAF, and TANF programs; and

(ii) Meets the financial and non-financial eligibility requirements for the REF and REFM programs.

(D) An REF client may not participate in the Pre-TANF program.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 33-1996(Temp), f. 9-26-96, cert. ef. 10-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 3-2008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 4-2008(Temp), f. & cert. ef. 2-22-08 thru 7-28-08

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

Adm. Order No.: SSP 5-2008

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Rules Amended: 461-001-0000, 461-001-0025, 461-025-0310, 461-101-0010, 461-105-0010, 461-110-0630, 461-115-0030, 461-115-0190, 461-115-0430, 461-120-0310, 461-120-0340, 461-120-0345, 461-125-0130, 461-125-0810, 461-130-0305, 461-130-0310, 461-130-0315, 461-130-0325, 461-130-0327, 461-130-0330, 461-130-0335, 461-135-0010, 461-135-0070, 461-135-0075, 461-135-0085, 461-135-0089, 461-135-0200, 461-135-0475, 461-135-0505, 461-135-0506, 461-145-0080, 461-145-0410, 461-155-0150, 461-155-0670, 461-160-0430, 461-165-0030, 461-170-0020, 461-170-0030, 461-180-0010, 461-180-0020, 461-180-0070, 461-180-0081, 461-190-0151, 461-190-0163, 461-190-0171, 461-190-0211, 461-190-0231, 461-190-0241, 461-195-0501, 461-195-0551, 461-195-0561, 461-195-0601

Rules Repealed: 461-001-0000(T), 461-001-0025(T), 461-025-0310(T), 461-101-0010(T), 461-105-0010(T), 461-110-0630(T), 461-115-0030(T), 461-115-0190(T), 461-115-0430(T), 461-115-0715(T), 461-120-0310(T), 461-120-0340(T), 461-120-0345(T), 461-125-0130(T), 461-125-0260(T), 461-125-0810(T), 461-130-0305(T), 461-130-0310(T), 461-130-0315(T), 461-130-0323(T), 461-130-0325(T), 461-130-0327(T), 461-130-0330(T), 461-130-0335(T), 461-135-0010(T), 461-135-0070(T), 461-135-0075(T), 461-135-0085(T), 461-135-0089(T), 461-135-0200(T), 461-135-0475(T), 461-135-0505(T), 461-135-0506(T), 461-135-1195(T), 461-135-1250(T), 461-145-0080(T), 461-145-0410(T), 461-155-0150(T), 461-155-0320(T), 461-155-0670(T), 461-160-0430(T), 461-165-0030(T), 461-170-0020(T), 461-170-0030(T), 461-180-0010(T), 461-180-0020(T), 461-180-0070(T), 461-180-0081(T), 461-190-0151(T), 461-190-0163(T), 461-190-0171(T), 461-190-0201, 461-190-0211(T), 461-190-0231(T), 461-190-0241(T), 461-195-0501(T), 461-195-0551(T), 461-195-0561(T), 461-195-0601(T)

Subject: OAR 461-001-0000 (Definitions for Chapter 461) is being amended to make permanent a temporary amendment adopted October 1, 2007. The rule is being amended to state how the term "dependent child" is defined for rules about the REF (Refugee Assistance) program, state how the term "minor parent" is defined for rules about the REF and REFM (Refugee Assistance Medical) programs, state how the term "disability" is defined for REF, SFPSS, TA-DVS, and TANF programs, state how the term "family stability" is defined in the , Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs, and state how the term "family stability activity" is defined in the , Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-001-0025 (Definitions of Terms, Components, and Activities; JOBS, Pre-TANF, Post-TANF, TANF) is being amended to make permanent a temporary amendment adopted October 1, 2007. The rule is being amended to revise the definitions of Job Opportunity and Basic Skills (JOBS) components and activities to conform to the interim final regulations issued by the Department of Health and Human Services. This rule classifies all JOBS activities as an activity or component of the JOBS program. Additional definitions are added for new JOBS activities (such as the Community Service Program), new components (such as Job Search and Job Readiness), and new JOBS policies (such as the Fair Labor Standards Act). This rule is also being amended to indicate that the definitions also apply in the Pre Temporary Assistance for Needy Families (Pre-TANF), Temporary Assistance for Needy Families (TANF), and Post Temporary Assistance for Needy Families (Post-TANF) programs.

OAR 461-025-0310 (Hearing Requests) is being amended to make permanent a temporary amendment adopted October 1, 2007. The rule is being amended to increase the time limit for Temporary Assistance for Needy Families (TANF) and Refugee (REF) clients to

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request hearings related to disqualifications or penalties. This amendment gives clients the right to request a hearing within 90 days following the effective date of a reduction or termination of benefits as a result of JOBS disqualification or a penalty for failure to seek treatment for substance abuse or mental health. Currently, clients have a right to request a hearing within 45 days following the date of the decision notice to reduce or terminate benefits. This rule is also being amended to remove the section that stated that there is no right to a hearing to dispute a program requirement established by law. 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 461-101-0010 (Program Acronyms and Overview) is being amended to add the Post Temporary Assistance for Needy Families (Post-TANF), Pre-Temporary Assistance for Needy Families (Pre-TANF), and State Family Pre SSI/SSDI (SFPSS) programs to the rule.

OAR 461-105-0010 (Rights of Clients) is being amended to make permanent a temporary amendment adopted October 1, 2007. This rule is being amended to add a provision that gives State Family Pre-SSI/SSDI (SFPSS), Temporary Assistance for Needy Families (TANF), Pre-TANF, and Refugee (REF) clients the right to be offered screenings or evaluations that identify barriers or disabilities unknown to the program. This rule is also being amended to give the clients in the REF, SFPSS, and TANF programs the right to decline such screenings and evaluations. This rule is being further amended to indicate that its discrimination prohibitions apply to state-funded programs. This rule is also being amended to add cross-references to other rules, Department procedures, and laws.

OAR 461-110-0630 about the individuals considered part of the need group is being amended to make permanent a temporary rule amendment adopted October 1, 2007 and change the requirements that apply to the Oregon Health Plan - Children's Health Insurance Program (CHIP or OHP-CHP) need group. The need group is group is the individuals whose basic and special needs are used in determining eligibility and benefit level. Effective October 1, 2007, CHIP clients will be required to provide or apply for a social security number as part of the eligibility process. CHIP clients who do not provide or apply for a social security number will not be part of the CHIP need group. Individuals excluded from the need group for medical program benefits are not considered when determining eligibility. This rule is also being amended to make permanent the temporary rule effective October 1, 2007 to state that a Temporary Assistance for Needy Families (TANF) program client cannot be in the need group when the client has exceeded the 60-month time limitation and does not meet any of the time limit exceptions.

OAR 461-115-0030 about the date of request is being amended to make permanent the temporary rule amendment adopted October 1, 2007 and add the State Family Pre-SSI/SSDI (SFPSS) program to the rule. The amendment to this rule specifies the date of request in the SFPSS program.

OAR 461-115-0190 about application processing time frames in programs other than food stamps or Pre-Temporary Assistance for Needy Families (Pre-TANF) is being amended to make permanent a temporary amendment filed October 1, 2007 and state when a new application is required to add an individual to a benefit group in the Refugee Assistance (REF) program.

OAR 461-115-0430 about periodic redeterminations in programs other than Emergency Assistance (EA), Employment-Related Day Care (ERDC), Extended Medical Assistance (EXT), Food Stamp (FS), Oregon Health Plan (OHP), Refugee Program (REF), Refugee Program Medical (REFM), or Temporary Assistance to Domestic Violence Survivors (TA-DVS) is being amended to make permanent a temporary amendment filed October 1, 2007, implement HB 2469 (2007 Oregon Laws Chapter 861), and state the eligibility redeter-

mination time frames for the State Family Pre-SSI/SSDI (SFPSS) program.

OAR 461-115-0715 about required verification in the State Family Pre-SSI/SSDI Program (SFPSS) is being adopted to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Or. Laws ch. 861, and state the verification requirements for eligibility in the SFPSS (State Family Pre-SSI/SSDI) program.

OAR 461-120-0310 about clients who are required to assign support rights is being amended to include TANF programs who are partially funded by Title IV-A of the Social Security Act. This rule is also being amended to state that filing groups in the EXT (Extended Medical Assistance), MAA (Medical Assistance Assumed), MAF (Medical Assistance to Families), OHP-OPC (Oregon Health Plan coverage for children who qualify under the 100 percent income standard) and OHP-OP6 (Oregon Health Plan coverage for children under age 6 who qualify under the 133 percent income standard) and OSIPM (Oregon Supplemental Income Program Medical) programs must assign to the state their right to receive, from any other person for any Medicaid-eligible child, cash medical support that has accrued or that accrues while the group receives assistance, not to exceed the total amount of assistance paid. The filing group consists of the individuals from the household group (individuals who live together) whose circumstances are considered in the eligibility determination process. Cash medical support received by the Department will be retained by the Department as is necessary to reimburse the Department for program medical assistance payments made on behalf of the Medicaid-eligible child in the filing group. Once, yearly the remainder of the amount retained will be paid to the Medicaid-eligible child.

OAR 461-120-0340 (Clients Required to Help Department Obtain Support From Noncustodial Parent in the Temporary Assistance for Needy Families (TANF) program) is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and excuse from this requirement clients who receive benefits from state-only funded programs: Post-TANF, State Family Pre-SSI/SSDI (SFPSS), and two-parent families for which deprivation is based on unemployment or underemployment of both parents. This rule is also being amended to clarify terms and add cross references to other rules and laws.

OAR 461-120-0345 about clients who are required to cooperate in obtaining medical coverage from a non-custodial parent is being amended to state that clients are required to cooperate for obtaining both health coverage and cash medical support from a non-custodial parent. This rule is also being amended to clarify that clients in the OHP-CHP (Oregon Health Plan coverage for persons under age 19 who qualify under the 185 percent income standard for medical assistance authorized by the Children's Health Insurance Program provision of the 1997 Balanced Budget Act) and TANF programs are exempt from the requirements to assist public agencies in establishing paternity, obtaining an order directing the non-custodial parent to provide health care coverage or cash medical support for that child, and make a good faith effort to obtain available coverage under Medicare. This rule is being further amended to clarify the rule generally, clarify the clients to which the rule applies, and remove clients in the REFM (Refugee Medical) program from employer insurance requirements. 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 461-125-0130, about evidence of deprivation based on continued absence in the Medical Assistance Assumed (MAA), Medical Assistance for Families (MAF), and Temporary Assistance for Needy Families (TANF) programs is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and to add a provision providing from HB 2469 that there is evidence of deprivation if the absent parent is not living in the same home as the

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dependent child and the visits of the absent parent with the child in the child's home do not exceed four times per week or a total of 30 hours per week (instead of the current 12 hours per week). This rule is also being amended to add cross-references to other rules and laws.

OAR 461-125-0260 about the impairment criteria in the State Family Pre-SSI/SSDI Program (SFPSS) is being adopted to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the impairment criteria for eligibility purposes for the SFPSS (State Family Pre-SSI/SSDI) program.

OAR 461-125-0810 is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement HB 2469, 2007 Oregon Laws Chapter 861, and add the SFPSS (State Family Pre-SSI/SSDI) program to this rule about the use of administrative medical examinations when determining disability for program eligibility.

OAR 461-130-0305 about general provisions for client participation in the employment programs of the Food Stamp (FS), Post-Temporary Assistance for Needy Families (Post-TANF), Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee (REF), and Temporary Assistance for Needy Families (TANF) programs is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the requirements for clients in the Pre-TANF and Post-TANF programs to participate in employment programs. This rule is also being amended to state that the necessary information that clients must provide to the Department includes information needed to help the Department assess the client's level of participation in the employment programs. In addition, this rule is being amended to remove unnecessary information and to add cross-references to other laws.

OAR 461-130-0310 about participation classifications in the employment programs of the Food Stamp (FS), Pre-Temporary Assistance for Needy Families (Pre-TANF), and Temporary Assistance for Needy Families (TANF) programs is being amended to make permanent a temporary rule amended October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and revise who is exempt from disqualification from the Job Opportunity and Basic Skills (JOBS) program to conform to new state laws and federal regulations. This amendment extends the exemption of clients with a newborn from three months to six months (for clients 20 years of age or older) and 16 weeks (for clients 19 years of age or younger). This amendment also exempts a parent who is providing care for a family member who has a disability. This rule is also being amended to indicate that the classification descriptions also apply in the Pre-TANF program.

OAR 461-130-0315 about general requirements in the Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee (REF), Temporary Assistance for Needy Families (TANF) programs is being amended to make permanent a temporary adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the general requirements for mandatory clients in the Pre-TANF program. This rule is also being amended to clarify that a mandatory client is subject to disqualification only after the re-engagement process has been completed. This rule is being further amended to add cross-references to other rules.

OAR 461-130-0323 about general provisions in the State Family Pre-SSI/SSDI program (SFPSS) is being adopted to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, state participation requirements in the SFPSS (State Family Pre-SSI/SSDI) program, state the information that an applicant for SFPSS must provide to the Department, and state that SFPSS clients may participate in JOBS activities.

OAR 461-130-0325 about participation requirements in the Food Stamp (FS), Refugee (REF), Temporary Assistance to Needy Families (TANF) programs is being amended to make permanent a temporary amendment adopted October 1, 2007 and change JOBS par-

ticipation requirements by stating that a client must provide verifiable documentation of JOBS participation hours, including paid work, job search, and educational participation hours. This rule is also being amended to replace add cross-references to other rules and laws and to follow standard formatting.

OAR 461-130-0327 about good cause is being amended to make permanent a temporary amendment adopted October 1, 2007. The rule is being amended to state that clients have good cause when participation is likely to cause undue hardship for the child or the client and when the client participates in suitable activities for the number of hours required each month to satisfy federally required participation rates. This rule is also being amended to state that clients have good cause when the client's prospective employer illegally discriminates based on sexual orientation. This rule is being further amended to state the good cause criteria in the Pre-TANF and State Family Pre-SSI/SSDI (SFPSS) programs. In addition, this rule is being reorganized to make it easier to follow and it is being amended to add cross-references to other rules.

OAR 461-130-0330 about disqualifications is being amended to make permanent a temporary rule amended October 1, 2007, implement the provisions of HB 2469, Oregon Laws Chapter 861, make permanent the new statutory disqualification structure (described in HB 2469) for clients in the Temporary Assistance for Needy Families (TANF) and Refugee (REF) programs. This rule is being amended to add new steps required of the Department before a disqualification can be applied, remove the current six-month disqualification structure, and establish a four-month disqualification structure. Under this amendment, the current penalty for the first two months of \$50 and loss of cooperation incentive (COI) will be removed. Under this rule as amended, the penalty for the first three months is that the needs of the non-cooperating adult are removed in addition to the COI. The penalty for the fourth month is that the benefit group will receive no cash. 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.

OAR 461-130-0335 about removing disqualifications and the resulting effect on benefits is being amended to make permanent a temporary rule amended October 1, 2007, to implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, incorporate the new statutory disqualification structure (described in HB 2469) for clients in the Temporary Assistance for Needy Families (TANF) and Refugee (REF) programs. Under the new structure, clients in active disqualification status will be required to cooperate for a two-week period before cash benefits can be restored. This rule is also being amended to revise its description of the conditions in which disqualifications can be removed and to replace old terminology with new terms. In addition, this rule is being amended to clarify the rule and make it easier to understand and to add cross-references to other rules.

OAR 461-135-0010 about assumed eligibility for medical programs is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state that two-parent families for whom deprivation is based on unemployment or underemployment of both parents are not assumed eligible for the Medical Assistance Assumed (MAA) program, which provides medical assistance to people who are eligible for Temporary Assistance for Needy Families (TANF) or Pre-Temporary Assistance for Needy Families (Pre-TANF) programs. The MAA eligibility for these families will be based on the standard eligibility requirements. This rule is also being amended to update program names.

OAR 461-135-0070 about specific requirements in the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), and Temporary Assistance for Needy Families (TANF) programs is being amended to implement the new statutory disqualification structure (described in HB 2469, 2007 Oregon Laws Chapter 861) and make permanent a temporary rule amendment adopted October 1, 2007. This amendment removes a provision that allows

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for children to be disqualified from TANF for failure to comply with the requirements of the Job Opportunity and Basic Skills (JOBS) program or requirements related to mental health and drug and alcohol treatment. In addition, this rule is being amended to align the rule with Siletz Tribes TANF program eligibility and to clarify the situations in which Siletz tribal families are ineligible for TANF through the Department because they are eligible for tribal TANF with the Siletz Tribe.

OAR 461-135-0075 about the eligibility period limitation in the Temporary Assistance for Needy Families (TANF) program is being amended to make permanent a temporary rule amended October 1, 2007 and implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861. This rule is also being amended to add cross-references to other rules.

OAR 461-135-0085 about requirements to seek treatment is being amended to make permanent a temporary rule amendment adopted October 1, 2007 and implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, which contains the new statutory disqualification structure. This rule is also being amended to apply these requirements to clients in the Pre-Temporary Assistance for Needy Families (Pre-TANF) and State Family Pre-SSI/SSDI Program (SFPSS) programs. This rule is also being amended to state that clients may be penalized under this rule only after the re-engagement process is complete. In addition, this rule is being amended to add cross-references to other rules.

OAR 461-135-0089 about demonstrating compliance with substance abuse and mental health requirements and restoring cash benefits is being amended to make permanent a temporary rule amendment adopted October 1, 2007 and implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, which contains the new statutory disqualification structure adopted by the 2007 legislature through HB 2469. This rule is being amended to specify when benefits can be restored at each level of disqualification. In addition, this rule is being amended to follow standard formatting and add cross-references to other rules.

OAR 461-135-0200 about multiple disqualifications is being amended to make permanent a temporary rule amendment adopted October 1, 2007, and be consistent with the new statutory disqualification structure adopted by the 2007 legislature through HB 2469, 2007 Oregon Laws Chapter 861. This rule is also being amended to remove a reference to an adult losing eligibility for medical benefits. In addition, this rule is being amended to add cross-references to other rules and laws.

OAR 461-135-0475 about specific requirements in the Pre-TANF program is being amended to make permanent a temporary amendment adopted October 1, 2007. The rule is being amended to remove references to the Assessment Program and replace them with Pre-TANF program. This rule is also being amended to revise the description of program purposes. This rule is being further amended to clarify that once the client is found eligible, the client participates in initial screenings to determine the client's employment strengths and any barriers to employment. This rule is also being amended to state that being enrolled in the Post-TANF program is a reason to close the Pre-TANF program. 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 461-135-0505 is being amended to revise the requirements for categorical eligibility in the Food Stamp program, make permanent a temporary rule change adopted October 1, 2007, and respond to the provisions of HB 2469, 2007 Oregon Laws Chapter 861. Categorical eligibility does not assume the person is eligible for benefits but it does allow the Department to simplify the eligibility determination process. The rule is being amended to include in categorical eligibility clients who are authorized to receive cash, in-kind benefits, or services funded either under Title IV-A of the Social Security Act or by the state as part of the TANF maintenance of effort are categorically eligible for food stamps. Previously, OAR 461-135-

0505 stated that clients who are authorized to receive in-kind benefits, or services funded by TANF are categorically eligible for food stamps. This rule is also being amended to replace old terminology with new terminology, to add cross-references to other rules and laws and to follow standard formatting.

OAR 461-135-0506 is being amended to make permanent the temporary rule amendment from October 1, 2007 that changes the TANF cases eligible to receive transitional food benefits. This rule is being amended to state that in order for an individual to receive transitional benefits, the individual must have received cash benefits through a program funded in whole or in part under Title IV-A of the Social Security Act. Under this amendment, clients in state-only funded programs, such as SFPSS (the State Family Pre-SSI/SSDI program) and TANF UN (two-parent households) will not be eligible for higher transitional benefits during the five-month transition period.

OAR 461-135-1195 is being adopted to make permanent a temporary rule adopted October 1, 2007 and outline specific eligibility requirements for the SFPSS (State Family Pre-SSI/SSDI) program.

OAR 461-135-1250 about specific requirements for the Post-Temporary Assistance for Needy Families (Post-TANF) program is being adopted to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state specific requirements for the new Post-TANF program. This program provides payments to TANF clients who have become ineligible for the TANF or Pre-TANF programs due to income from employment. This rule sets out the eligibility and reporting requirements for a Post-TANF client to receive a payment.

OAR 461-145-0080 about the treatment of child support payments in the eligibility process for public assistance and the Food Stamp program is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861 and HB 2125, 2007 Oregon Laws Chapter 878, and state how cash medical support is treated. This rule is also being amended to change references to JOBS Plus agreements to TANF JOBS Plus agreements. This rule is also being amended to state how child support payments are treated in the SAC program (Medical Coverage for Children in Substitute or Adoptive Care). This rule is being further amended to add cross-references and follow standard formatting.

OAR 461-145-0410 about how program benefits are treated in Food Stamp and public assistance programs is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, remove the exclusion in the Oregon Health Plan (OHP) program for administrative error overpayments, and state how TADVS program payments are treated. This rule is also being amended to exclude Refugee (REF) program support service payments and count REF program client incentive payments to the extent that Temporary Assistance for Needy Families (TANF) client incentive payments are counted. This rule is being further amended to state that all policies about the treatment of TANF benefits apply to tribal TANF benefits and to state that the current exclusion for JOBS Plus support services payments applies to TANF JOBS Plus support services payments. In addition, the rule is being amended to state that TANF client incentive payments currently counted if received as cash are counted if the payments are not in kind. The rule is also being amended to add the Post-TANF and State Family Pre-SSI/SSDI (SFPSS) programs to the rule and specify how benefits from these programs are counted in other programs. This rule is also being amended to reorder and reorganize its sections, update terminology, add cross-references and follow standard formatting.

OAR 461-155-0150 about child care rates in the Employment Related Day Care (ERDC), Job Opportunity and Basic Skills (JOBS), JOBS Plus, and Temporary Assistance for Needy Families (TANF) programs is being amended to make permanent a temporary rule change made on October 1, 2007 that implemented a legislatively approved increase to restore the Employment Related Day Care (ERDC) program income limit to 185 percent of the federal

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poverty level (FPL), reduce ERDC copayments by an average of 20 percent, and increase child care reimbursement rates to closer to the 75th percentile of the 2006 Child Care Market Rate Study (bringing state payments into alignment with rates charged by the majority of providers). This amendment will increase reimbursement rates to 88 percent of the 75th percentile for license-exempt providers, 95 percent of the 75th percentile for license-exempt providers who are eligible for the enhanced rate, and the 75th percentile for licensed providers. This amendment sets a minimum co-pay of \$25 per month. For families whose income is at or below 50 percent of the 2007 Federal Poverty Level, the co-pay is \$25 or 1.5% of monthly income (whichever is greater). The co-pay percentage increases from 1.5 by 0.12 for each 1 percent increase in Federal Poverty Level. 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 461-155-0320 about the payment standard in the State Family Pre-SSI/SSDI (SFPSS) program is being adopted to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and adopt the payment standards in the SFPSS program.

OAR 461-155-0670 about special needs and special diet allowances is being amended to make permanent a temporary rule change adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and describe the eligibility of SFPSS (State Family Pre-SSI/SSDI) clients for special dietary allowances.

OAR 461-160-0430 about the income deductions allowed in the eligibility process for the Food Stamp program is being amended to make permanent a temporary rule change adopted October 1, 2007 and clarify that the deduction for payment of court-ordered child support includes cash medical support. A reduction in countable income may result in an increase in Food Stamp benefits for a Food Stamp household.

OAR 461-165-0030 about concurrent and duplicate program benefits is being amended to make permanent a temporary rule change adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and remove a reference to the Assessment Program, replacing it with the Pre-TANF program.

OAR 461-170-0020 about changes that must be reported in public assistance and food stamp programs is being amended to make permanent a temporary rule change adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the changes that clients in the State Family Pre-SSI/SSDI Program (SFPSS), program must report. This rule is also being amended to add cross-references and follow standard formatting.

OAR 461-170-0030 about changes that must be reported in certain programs is being amended to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and clarify that the reporting requirements in this rule do not apply in the SFPSS (State Family Pre-SSI/SSDI) program. This rule is also being amended to follow standard formatting.

OAR 461-180-0010 about the effective dates when adding a new person to an open case is being amended to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the effective date in the SFPSS (State Family Pre-SSI/SSDI) program for adding a new person to an open SFPSS program case.

OAR 461-180-0020 about the effective date when changes in income or income deductions cause increases in program benefits is being amended to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the effective date for changes not reported through the monthly reporting system for clients in the SFPSS (State Family Pre-SSI/SSDI) program.

OAR 461-180-0070 about effective dates for the initial month cash benefits is being amended to make permanent a temporary rule

amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the effective date for the initial month of cash benefits for clients in the SFPSS (State Family Pre-SSI/SSDI) program.

OAR 461-180-0081 about effective dates for cases receiving Transitional Benefit Alternative (TBA) is being amended to make permanent a temporary rule adopted October 1, 2007, respond to the provisions of HB 2469, 2007 Oregon Laws Chapter 861, revise the effective dates that apply to changes after a household is already receiving transitional food stamp benefits, and clarify when TBA benefits will change based with the revisions to OAR 461-135-0506.

OAR 461-190-0151 about case planning in the Job Opportunity and Basic Skills (JOBS), Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee Assistance (REF), State Family Pre-SSI/SSDI Program (SFPSS) and Temporary Assistance for Domestic Violence Survivors (TA-DVS) is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and describe case planning in the Pre-TANF, Refugee (REF), State Family Pre-SSI/SSDI (SFPSS), and Temporary Assistance for Domestic Violence Survivors (TA-DVS) programs. This rule had covered employment planning in the Job Opportunity and Basic Skills (JOBS) program. This rule is also being amended to specify when the case plan is complete and binding in the JOBS program. In addition, this rule is being amended to add cross-references to other rules and follow standard formatting.

OAR 461-190-0163 about restrictions on On-the-Job training, Unpaid Employment, and Work Supplementation in the Job Opportunity and Basic Skills program (JOBS) is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and change the JOBS term "work experience" to "unpaid employment." This change is being made to follow new federal definitions.

OAR 461-190-0171 about education requirements for teen parents in the Job Opportunity and Basic Skills (JOBS) program is being amended to make permanent a temporary rule adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and change the exemption rule for teen parents enrolled in JOBS educational programs. This amendment extends the exemption of a client with a newborn from three months to 16 weeks for clients 19 years of age or younger, except that the teen parent may be required to participate in suitable activities with a preference for educational activities, parenting classes, and family stability activities.

OAR 461-190-0201 about job search in the Job Opportunity and Basic Skills (JOBS) program is being repealed.

OAR 461-190-0211 about standards for support services is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the standards for support service payments for clients in the Pre-Temporary Assistance for Needy Families (Pre-TANF), Post-Temporary Assistance for Needy Families (Post-TANF) and State Family Pre-SSI/SSDI (SFPSS) programs. This rule is also being amended to expand the clients potentially eligible for the payments to include recipients of Supplemental Security Income (SSI) and non-needy caretaker relatives who volunteer. This rule is being further being amended to add tuition for vocational training as a potential payment, state the criteria for making such payments. This rule is being further being amended to clarify that not all support services are related to the Job Opportunity and Basic Skills (JOBS) program, and add cross-references to other rules.

OAR 461-190-0231 about re-engagement is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, change the title of the rule, and describe the re-engagement process for clients in the Pre-Temporary Assistance for Needy Families (Pre-TANF), Refugee (REF), State Family Pre-SSI/SSDI

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(SFPSS), and Temporary Assistance for Domestic Violence Survivors (TA-DVS) programs. This rule is also being amended to provide more detail and clarification about the re-engagement process, incorporating requirements of HB 2469 that also apply to clients in the JOBS program.

OAR 461-190-0241 about transition services in the Job Opportunity and Basic Skills (JOBS) program is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, update program names, and add cross-references to other rules.

OAR 461-195-0501 about definitions related to overpayments in programs covered by Chapter 461 of the Oregon Administrative Rules other than child care programs is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state how the terms “overpayment” and “client error” are defined in the SFPSS (State Family Pre-SSI/SSDI) program. This rule is also being amended to remove old terminology and replace it with new terms. This rule is being amended to add cross-references to other rules and laws. This rule is being amended to follow standard formatting.

OAR 461-195-0551 about, methods of recovering overpayments is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state when the Department may reduce current benefits in the SFPSS (State Family Pre-SSI/SSDI, Temporary Assistance for Needy Families (TANF) and Refugee Assistance (REF) programs to collect an overpayment. This rule is also being amended to remove old terminology and replace it with new terms. This rule is being amended to add cross-references to other rules and laws. This rule is being amended to follow standard formatting.

OAR 461-195-0561 about the compromise of overpayment claims is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state the Department policy for the compromise of overpayment claims in the SFPSS (State Family Pre-SSI/SSDI) program. This rule is also being amended to remove old terminology and replace it with new terms. This rule is being amended to add cross-references to other rules and laws. This rule is being amended to follow standard formatting.

OAR 461-195-0601 about the definition of Intentional Program Violations in the Food Stamp, State Family Pre-SSI/SSDI Program (SFPSS), Temporary Assistance for Domestic Violence Survivors (TA-DVS), and Temporary Assistance for Needy Families (TANF) programs is being amended to make permanent a temporary rule amendment adopted October 1, 2007, implement the provisions of HB 2469, 2007 Oregon Laws Chapter 861, and state what constitutes an Intentional Program Violation in the SFPSS (State Family Pre-SSI/SSDI) program. This rule is also being amended to replace old terminology with new terminology, add cross-references to other rules and laws, and follow standard formatting.

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

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.

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(d) In the OSIPM and QMB programs, child means an unmarried individual living with a parent who is:

(A) Under the age of 18; or

(B) Under the age of 22 and attending full time secondary, post secondary or vocational-technical training designed to prepare the individual for employment.

(16) "Community based care" is any of the following:

(a) Adult foster care — Room and board and 24 hour care and services for the elderly or for disabled people 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.

(b) Assisted living facility — A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.

(c) In-home Services — People living in their home receiving services determined necessary by the Department.

(d) Residential care facility — A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.

(e) Specialized living facility — Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.

(f) Independent choices — In-home Services recipients in demonstration sites who receive a cash benefit to coordinate in-home services under a section 1115 (42 U.S.C. 1315) demonstration waiver.

(17) "Continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.

(18) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.

(19) "Custodial parents" mean parents who have physical custody of a child. Custodial parents may be receiving benefits as dependent children or as caretaker relatives for their own children.

(20) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.

(21) "Department" means the Department of Human Services (DHS).

(22) "Dependent child", in the EXT, MAA, MAF, REF, REFM, and TANF programs, means the following:

(a) An individual who is not a caretaker relative of a child in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or

(b) A minor parent whose parents have chosen to apply for benefits for the minor parent. This does not apply to a minor parent who is married and living with his or her spouse.

(23) "Disability" means:

(a) In the FS program, see OAR 461-001-0015.

(b) In the REF, SFPSS, TA-DVS, and TANF programs, for purposes other than determining eligibility:

(A) An individual with a physical or mental impairment that substantially limits the individual's ability to meet the requirements of the program; or

(B) An individual with a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment as defined by the Americans with Disabilities Act (42 USC 12102; 28 CFR 35.104).

(24) "Domestic violence" means the occurrence of one or more of the following acts between family members, intimate partners, or household members:

(a) Attempting to cause or intentionally, knowingly or recklessly causing physical injury or emotional, mental or verbal abuse.

(b) Intentionally, knowingly or recklessly placing another in fear of imminent serious physical injury.

(c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.

(d) Using coercive or controlling behavior.

(25) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to victims of domestic violence. If the facility serves other people, a portion must be used solely for victims of domestic violence.

(26) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.

(27) "Equity value" means fair market value minus encumbrances.

(28) "Fair market value" means the amount an item is worth on the open market.

(29) "Family stability" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF program means the characteristics of a family that support healthy child development, including parental mental health, drug and alcohol free environment, stable relationships, and a supportive, flexible, and nurturing home environment.

(30) "Family stability activity" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF program means an action or set of actions taken by the client, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain family stability.

(31) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.

(32) "HPN" means a health plan new/noncategorical client eligible under OHP-OPU.

(33) "Income-producing property" means any real or personal property that generates income for the financial group. Examples of income-producing property are:

(a) Livestock, poultry, and other animals.

(b) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, condominiums.

(34) "Initial month" of eligibility means any of the following:

(a) In all programs, the first month a benefit group (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.

(b) In all programs except the FS program, the first month a benefit group is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.

(c) In the FS program:

(A) The first month for which the benefit group is certified following any period during which they were not certified to participate, except for migrant and seasonal farm workers (see OAR 461-001-0015).

(B) For migrant and seasonal farmworkers, the first month for which the benefit group is certified following any period of one month or more during which they were not certified to participate.

(d) In the OHP program, the first month of a redetermination or recertification period.

(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:

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(a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.

(b) Income from inheritance, gifts, winnings and personal injury claims.

(41) "Marriage" means the union of a man and a woman who are legally married.

(42) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.

(43) "Minor parent", in the ERDC, EXT, MAA, MAF, REF, REFM, and TANF programs, means a parent under the age of 18.

(44) "Nonstandard living arrangement" is defined as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs, a client is considered to be in a nonstandard living arrangement when the client is applying for or receiving services in any of the following locations:

(A) A nursing facility.

(B) An intermediate care facility for the mentally retarded (ICF/MR).

(C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.

(D) A community-based setting covered by a waiver under Title XIX of the Social Security Act.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, a nonstandard living arrangement means each of the following locations:

(A) Foster care.

(B) Residential Care Facilities.

(C) Drug or Alcohol Residential Treatment Facilities.

(D) Homeless or Domestic Violence Shelters.

(E) Lodging house if paying for room and board.

(F) Correctional facilities.

(G) Medical institutions.

(45) "Ongoing month" means one of the following:

(a) For all programs except FS and OHP, any month following the initial month of eligibility, if there is no break in the program benefit of one or more calendar months.

(b) For the FS and OHP programs, any month in the certification period following the initial month of eligibility.

(46) "Parent" means the biological or legal (step or adoptive) mother or father of an individual or unborn child.

(a) If the mother lives with a male and either she or the male claims that he is the father of the child or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.

(b) A stepparent relationship exists if:

(A) The individual is legally married to the child's biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce or death.

(c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a parent if both of the following are true:

(A) The child lives with the biological parent; and

(B) The legal parent (the adoptive parent) has given up care, control and supervision of the child.

(47) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(48) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.

(49) "Periodic income" means income received on a regular basis less often than monthly.

(50) "Primary person" for all programs except FS, means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The primary person for individual programs is as follows:

(a) For EXT, MAA, MAF, and TANF, the parent or caretaker relative.

(b) For ERDC, the caretaker.

(c) For FS, see OAR 461-001-0015.

(d) For GA, GAM, OSIP, OSIPM, and QMB, the client or their spouse.

(e) For OHP, REF, and REFM, the applicant, caretaker, caretaker relative or parent.

(51) "Qualified Partnership Policy" means a long term care insurance policy meeting the requirements of OAR 836-052-0531 that was either:

(a) Issued while the client was a resident in Oregon on January 1, 2008 or later; or

(b) Issued in another state while the client was a resident of that state on or after the effective date of that state's federally approved State Plan Amendment to issue qualified partnership policies.

(52) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.

(53) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(54) "Safe homes" mean private homes that provide a few nights lodging to victims of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.

(55) "Shelter costs" mean, in all programs except the Food Stamp program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the Food Stamp program, see OAR 461-160-0420.

(56) "Shelter-in-kind" means an agency or person outside the household group (see OAR 461-110-0210) provides the shelter of the financial group (see OAR 461-110-0530), or makes a payment to a third party for some or all of the shelter costs of the financial group.

(a) For all programs except OSIP, OSIPM, and QMB, shelter-in-kind does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities.

(b) For OSIP, OSIPM, and QMB, shelter-in-kind also includes situations where the client has no shelter costs.

(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

461-001-0025

Definitions of Terms, Components, and Activities; JOBS, Pre-TANF, Post-TANF, TANF

In the JOBS, Pre-TANF, Post-TANF, and TANF programs, the following definitions apply to rules in Chapter 461 unless the context indicates otherwise.

(1) Activity: An action or set of actions to be taken by the client, as specified in the case plan. An activity is intended to reduce barriers and:

(a) Increase the likelihood of self sufficiency, employment, job retention, wage enhancement, and financial independence; or

(b) Promote family stability (see OAR 461-001-0000).

(2) Adult Basic Education (ABE): An activity in the basic education component that involves remedial education coursework intended to ensure functional literacy.

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(3) **Assessment:** An activity of the program entry component that involves gathering information to identify the strengths, interests, family circumstances, status in the JOBS program, and vocational aptitudes and preferences of the client and to mutually determine an employment goal, the level of participation of the client in the JOBS program, and which support services are needed. This activity includes providing screenings and evaluations (if appropriate) to determine the level of participation, accommodation, and modification for the client in the JOBS program. The screenings include but are not limited to physical and mental health needs, substance abuse, domestic violence, and learning needs.

(4) **Barrier:** A personal condition or circumstance that reduces the likelihood the client will become employed or the client's ability to participate in an activity listed in the case plan.

(5) **Basic education:** A component of non-core activities intended to ensure functional literacy for all JOBS clients. Basic education activities are high school attendance, English as a second language (ESL) instruction, job skills training, adult basic education (ABE) instruction, and services that result in obtaining a general equivalency diploma (GED). The component is discussed in OAR 461-190-0171 and 461-190-0181.

(6) **Case plan** (formerly also known as an employment development plan (EDP), a personal plan, or personal development plan): A written outline, developed in partnership by the client and case manager, with input from partners as appropriate, listing activities and goals for the client. The case plan also identifies the support service payments, accommodations, and modifications to help the client complete the plan. The DHS 1543 — Domestic Violence Assistance Agreement — is the case plan for clients with safety concerns about domestic violence.

(7) **Community Service Program:** An activity in the unpaid employment component in which the client works without pay at a job site to enhance the likelihood the client will become employed and perform work for the direct benefit of the community. This activity is available through nonprofit organizations or public agencies.

(8) **Component:** A set of one or more activities of the JOBS program. Components of the JOBS program are paid unsubsidized employment, paid subsidized employment, unpaid employment, vocational training, job search and readiness, and basic education activities.

(9) **Core activities:** Federally-defined countable work activities that include: paid unsubsidized employment; paid subsidized employment; work experience; on-the-job training; job search and readiness; community service programs; vocational training; and providing child care assistance to a community service program participant.

(10) **Degree Completion Initiative (DCI):** An activity in which a limited number of TANF recipients may participate for up to 12 months to complete an educational degree at a two- or four-year educational institution as defined at OAR 461-190-0195(2)(b). This activity is discussed at OAR 461-190-0195.

(11) **Drug and alcohol services:** An activity in the job search and readiness component that provides substance abuse screenings and evaluations, outpatient or resident treatment, and support groups such as AA or NA.

(12) **Employer contact:** A client communication with an employer or employer's representative through a visit, phone call, or mail to request consideration for employment.

(13) **English as a second language (ESL):** An activity in the basic education component. ESL classes are designed to give clients with limited English proficiency better working skills in the language.

(14) **Fair Labor Standards Act (FLSA):** Applies to subject employers with clients working in the unpaid employment component. FLSA requires that clients engaged in unpaid employment, in effect, cannot "work off" their TANF and Food Stamp benefits at an hourly rate less than the state minimum wage.

(15) **Federally required participation rates:** The participation rates required by section 407 of the Social Security Act (42 USC 607).

(16) **High School or GED Completion Attendance:** An activity in the basic education component that involves attendance at a secondary school or in a course of study that leads to the completion of the GED.

(17) **Job search:** An activity in the job search and readiness component that focuses on clients looking for and obtaining employment. It is designed to improve skills in locating and competing for employment in the local labor market and may include writing resumes, receiving instruction in interviewing skills, and participating in group and individual job search. There are two categories of job search: initial job search and regular job search. Initial job search may occur during the Pre-TANF program. Regular job search begins not later than the day after the Department finds the client eligible for TANF benefits.

(18) **Job search and readiness:** A component designed to prepare clients to compete in the local labor market. Job search, life skills, drug and alcohol services, mental health services, and rehabilitation activities are the activities of the job search and readiness component.

(19) **Job skills training:** An activity in the basic education component designed to provide classroom training in vocational and technical skills or equivalent knowledge and abilities in a specific job area.

(20) **JOBS Plus program (JOBS Plus):** An activity in the paid subsidized employment component that provides TANF clients with on-the-job training and pays their benefits as wages (see the rules at OAR 461-190-0401 and following).

(21) **Life skills:** An activity of the job search and readiness component. The activity develops employment-preparation skills and skills and attitudes that are commonly found in the workplace.

(22) **Mental health services:** An activity in the job search and readiness component that provides mental health screenings and assessments, counseling, medication management, and support groups.

(23) **Microenterprise:** An activity in the paid unsubsidized employment component in which the client is self-employed in a sole proprietorship, partnership, or family business that has fewer than five employees and has capital needs no greater than \$35,000.

(24) **Non-core activities:** Federally-defined countable work activities that include: job skills training directly related to employment; education directly related to employment; and satisfactory school attendance at a secondary level or leading to a GED.

(25) **On-the-job training (OJT):** An activity in the paid subsidized employment component in which a client works for an employer for a contracted period. The employer trains the client and is reimbursed by the Department, usually at 50 percent of the wages of the participant, for those training costs.

(26) **Paid subsidized employment:** A component in which clients are employed in a subsidized public or private sector job. JOBS Plus, work supplementation, and on-the-job training are the activities in the paid subsidized employment component.

(27) **Paid unsubsidized employment:** A component in which clients are employed full- or part-time in an unsubsidized job and receiving TANF benefits. Unsubsidized employment is a job that is not subsidized by TANF or any other public program. The UN work program and microenterprise are the activities in the paid unsubsidized employment component.

(28) **Program entry:** An activity that includes all the activities that prepare a client to actively participate in the JOBS program. Program entry activities include assessment and writing the initial case plan.

(29) **Progress (good or satisfactory):** For federal reporting purposes, a client participating in an education or training activity makes good progress or satisfactory progress by receiving a passing grade or progressing toward completion of high school or GED completion at no less than the normal rate of a half-time student.

(30) **Providing child care services to a Community Service Program participant:** An activity in the unpaid employment component.

(31) **Rehabilitation activities:** An activity in the job search and readiness component that provides medical or therapeutic screenings, assessments, and treatment. This activity also includes medical management and support groups.

(32) **Sheltered or supported work:** An activity in the unpaid employment component that gives clients intensive staff support, skill training, intervention and counseling that will enable them to function independently at work.

(33) **Stabilization, intervention, and other activities:** A group of activities that are non-countable for federal participation purposes. These activities include child health and development, crisis intervention, domestic violence services, family stability activities (see OAR 461-001-0000), medical services, retention services, services to child welfare families, social security application, and stabilized living services.

(34) **Support services:** Services that case-managed clients need to participate successfully in activities outlined in their case plan, seek and maintain employment, or remove barriers.

(35) **Teen parent:** Custodial parent under age 20.

(36) **Transition services:** Services included in a client's case plan when the client becomes employed or becomes ineligible for cash benefits because of an increase in income or resources.

(37) **Unpaid employment:** A component in which a client is placed in an unpaid job to develop good work habits, training and knowledge to obtain employment. Employment may be in the private or public sector or through a work simulation program. Work experience, Community Service Program, providing child care services to a Community Service Program

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participant, and sheltered or supported work are the activities of the unpaid employment component.

(38) UN work program: An activity in the paid unsubsidized employment component in which TANF clients work in unsubsidized employment and may also participate in another JOBS work site training activity.

(39) Vocational Training: An activity and component of the JOBS program that provides JOBS participants with access to specific vocational training that will lead to a career with an appropriate wage level and opportunity for employment.

(40) Work experience: An activity in the unpaid employment component in which the client works without pay at a job site to develop good work habits and basic vocational skills that enhance the likelihood the client will become employed. Work experience is available through private for-profit businesses, nonprofit organizations or public agencies.

(41) Work supplementation: An activity in the unpaid employment component. Up to six months of work-site training provided by an employer. The component and activity are both called work supplementation. In work supplementation, the Department subsidizes the wages of the participant by providing up to \$200 per month to the employer.

Stat. Auth.: ORS 411.060, 418.040, 418.045, 418.100

Stats. Implemented: ORS 411.060, 418.035, 418.040, 418.045, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 10-1991, f. & cert. ef. 4-19-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; 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 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; Renumbered from 461-190-0110, SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

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) The Department has not acted on 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) The right to a hearing is otherwise provided by statute or rule.

(2) A client is not entitled to a hearing on the question of the contents of a case plan (defined in OAR 461-190-0151) unless the right to hearing

is specifically authorized by the Department's rules. For a dispute about an activity in the JOBS program, the client is entitled to use the Department's re-engagement process (see OAR 461-190-0231). In the TA-DVS program, a dispute about the contents of a TA-DVS case plan (see OAR 461-135-1205) is resolved through re-engagement if there is no right to a hearing under OAR 461-135-1235.

(3) A request for hearing is complete:

(a) In public assistance programs, when the Department's Administrative Hearing Request form (form DHS 443) is completed and signed by the claimant or the claimant's representative and is received by the Department.

(b) In the Food Stamp program when:

(A) The Department receives the claimant's oral or written statement that he or she wishes to appeal a decision affecting the claimant's food stamp benefits to a higher authority; or

(B) The Department's Administrative Hearing Request form (form DHS 443) is completed and signed by the claimant or the claimant's representative and is received by the Department.

(c) In the case of a provider of child care, when a written request for hearing from the provider is received by the Department.

(4) In the event a request for hearing is not timely, the Department will determine whether the failure to timely file a request for hearing was beyond the reasonable control of the party and enter an order accordingly. The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness.

(5) In the event the claimant has no right to a contested case hearing on an issue, the Department may enter an order accordingly. The Department may refer a hearing request to the Office of Administrative Hearings for a hearing on the question of whether the claimant has the right to a contested case hearing.

(6) To be timely, a completed hearing request must be received by the Department not later than:

(a) Except as provided in subsection (b) of this section, the 45th day following the date of the decision notice (see OAR 461-001-0000) in public assistance and medical programs.

(b) The 90th day following the effective date of the reduction or termination of benefits in a public assistance program if the reduction or termination of aid is a result of a JOBS disqualification (see OAR 461-130-0330) or a penalty for failure to seek treatment for substance abuse or mental health (see OAR 461-135-0085).

(c) The 90th day following the date of the decision notice in the Food Stamp program, except:

(A) A filing group may submit a hearing request at any time within a certification period (see OAR 461-001-0000) to dispute its current level of benefits.

(B) A filing group may submit a hearing request within 90 days of the denial of a request for restoration of benefits if not more than twelve months has expired since the loss of benefits.

(d) The 30th day following the date of notice from the Oregon Department of Revenue in cases covered by ORS 293.250.

(e) In a case described in subsection (1)(h) of this rule, the request must be made within 90 days of the date the waiver was signed.

(7) In determining timeliness under section (6) of this rule, delay caused by circumstances beyond the control of the claimant is not counted.

(8) In computing the time periods provided by this rule, see OAR 461-025-0300(1).

[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

461-101-0010

Program Acronyms and Overview

(1) Acronyms are frequently used when referring to a program. There is an acronym for each umbrella program (for instance, ERDC) and acronyms for each subprogram (for instance, ERDC-SBG).

(2) When no program acronym appears in a rule in Chapter 461 of these rules, the rule with no program acronym applies to all programs listed in this rule. If a rule does not apply to all programs, the rule uses program acronyms to identify the programs to which the rule applies.

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(3) Wherever an umbrella acronym appears, that means the rule covers all the subprograms under that code (for instance, OSIP means OSIP-AB, OSIP-AD, and OSIP-OAA).

(4) ADC; Aid to Dependent Children. Financial aid to low-income families when children are deprived of parental support because of continued absence, death, incapacity, or unemployment. When used alone, ADC refers to all ADC programs. Use of the acronym, ADC, which stands for Aid to Dependent Children, and use of the phrase, Aid to Dependent Children, refer to the state's Temporary Assistance for Needy Families Program, and its acronym, TANF. The following codes are used for ADC subprograms:

(a) ADC-BAS; Aid to Dependent Children — Basic (includes eligibility based on continued absence, death, incapacity, or unemployment). ADC with deprivation based on unemployment is also denoted by ADC-BAS/UN.

(b) EA; Aid to Dependent Children — Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.

(5) ADCM; Aid to Dependent Children Medical. Medical aid to low-income families when children are deprived of parental support, as for ADC. Use of the acronym ADCM, which stands for Aid to Dependent Children Medical, and use of the phrase Aid to Dependent Children Medical refer to EXT, MAA, MAF, and SAC programs. When used alone, ADCM refers to all ADC-related medical programs. The following codes are used for ADCM subprograms:

(a) ADCM-BAS; Aid to Dependent Children Medical — Basic.

(b) ADCM-EXT; Aid to Dependent Children Medical — Extended. ADCM-EXT provides extended medical benefits to families after their ADC benefits end.

(c) ADCM-SAC; Aid to Dependent Children Medical — Substitute or Adoptive Care. ADCM-SAC gives medical coverage to children in substitute or adoptive care.

(6) The Assessment Program (see the Pre-TANF program in this rule).

(7) BCCM; Breast and Cervical Cancer Medical program.

(8) CAWEM; Citizen/Alien-Waived Emergent Medical. Medicaid coverage of emergent medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and alien status requirements.

(9) DFSP; Disaster Food Stamp Program. Following a presidential declaration of a major disaster in Oregon, DFSP provides emergency food stamps to victims. OAR 461-135-0491 to 461-135-0497 cover DFSP eligibility and benefits.

(10) ERDC; Employment- or Education-Related Day Care. Helps low-income families pay the cost of child care. When used alone, ERDC refers to all ERDC programs. The following codes are used for ERDC subprograms:

(a) ERDC-BAS; ERDC — Basic. Child care for working families.

(b) ERDC-SBG; ERDC — Student Block Grant. Child care for students.

(11) EXT; Extended Medical Assistance. The Extended Medical Assistance program provides medical assistance for a period of time after a family loses its eligibility for the MAA, MAF, or Pre-TANF program due to an increase in their child support or earned income.

(12) FS; Food Stamps. Helps low-income households maintain proper nutrition by giving them the means to purchase food.

(13) GA; General Assistance. Cash assistance to low-income individuals with disabilities who do not have dependent children.

(14) GAM; General Assistance Medical. Medical assistance to clients who are eligible for the GA program but have not been found eligible for OSIPM benefits.

(15) HSP; Housing Stabilization Program. A program that helps low-income families obtain stable housing. The program is operated through the Housing and Community Services Department through community-based, service-provider agencies. The Department's rules for the program (OAR 461-135-1305 to 461-135-1335) were repealed July 1, 2001.

(16) JOBS; Job Opportunity and Basic Skills. An employment program for REF, REFM, and TANF clients. JOBS helps these clients attain self-sufficiency through training and employment. The program is part of Welfare Reform.

(17) JOBS Plus. Provides subsidized jobs rather than FS or TANF benefits. For TANF clients, JOBS Plus is a component of the JOBS Program; for FS clients and noncustodial parents of children receiving TANF, it is a separate employment program. Eligibility for TANF clients, FS clients, and noncustodial parents of children receiving TANF is determined by the Department. Eligibility for UI recipients is determined by the Oregon State Employment Department. When used alone, JOBS Plus

includes only clients whose JOBS Plus program participation is through the Department of Human Services. JOBS Plus administered through the Oregon State Employment Department is known in chapter 461 of the Oregon Administrative Rules as Oregon Employment Department UI JOBS Plus. The following acronyms are used for specific categories:

(a) ADC-PLS; Clients eligible for JOBS Plus based on TANF.

(b) FS-PLS; Clients eligible for JOBS Plus based on FS.

(c) NCP-PLS; Noncustodial parents of children receiving TANF.

(18) LIS; Low-Income Subsidy. The Low-Income Subsidy program is a federal assistance program for Medicare clients who are eligible for extra help meeting their Medicare Part D prescription drug costs.

(19) MAA; Medical Assistance Assumed. The Medical Assistance Assumed program provides medical assistance to people who are eligible for the Pre-TANF program or ongoing TANF benefits.

(20) MAF; Medical Assistance to Families. The Medical Assistance to Families program provides medical assistance to people who are ineligible for MAA but are eligible for Medicaid using ADC program standards and methodologies that were in effect as of July 16, 1996.

(21) OFSET. The Oregon Food Stamp Employment Transition Program, which helps FS recipients find employment. This program is mandatory for some FS recipients.

(22) OHP; Oregon Health Plan. The Oregon Health Plan Program provides medical assistance to many low-income individuals and families. The program includes five categories of people who may qualify for benefits. The acronyms for these categories are:

(a) OHP-OPU; Adults. OHP coverage for adults who qualify under the 100 percent income standard. A person eligible under OHP-OPU is referred to as a health plan new/noncategorical (HPN) client.

(b) OHP-OPC; Children. OHP coverage for children who qualify under the 100 percent income standard.

(c) OHP-OP6; Children Under 6. OHP coverage for children under age 6 who qualify under the 133 percent income standard.

(d) OHP-OPP; Pregnant Females and their newborn children. OHP coverage for pregnant females who qualify under the 185 percent income standard and their newborn children.

(e) OHP-CHP; Persons Under 19. OHP coverage for persons under age 19 who qualify under the 185 percent income standard for medical assistance authorized by the Children's Health Insurance Program (CHIP) provision of the 1997 Balanced Budget Act.

(23) OSIP; Oregon Supplemental Income Program. Cash supplements and special need payments to persons who are blind, disabled, or 65 years of age or older. When used alone, OSIP refers to all OSIP programs. The following acronyms are used for OSIP subprograms:

(a) OSIP-AB; Oregon Supplemental Income Program — Aid to the Blind.

(b) OSIP-AD; Oregon Supplemental Income Program — Aid to the Disabled.

(c) OSIP-EPD; Oregon Supplemental Income Program — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIP-OAA; Oregon Supplemental Income Program — Old Age Assistance.

(24) OSIPM; Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals. When used alone, OSIPM refers to all OSIP-related medical programs. The following codes are used for OSIPM subprograms:

(a) OSIPM-AB; Oregon Supplemental Income Program Medical — Aid to the Blind.

(b) OSIPM-AD; Oregon Supplemental Income Program Medical — Aid to the Disabled.

(c) OSIPM-EPD; Oregon Supplemental Income Program Medical — Employed Persons with Disabilities program. This program provides Medicaid coverage for employed persons with disabilities with adjusted income less than 250 percent of the Federal Poverty Level.

(d) OSIPM-OAA; Oregon Supplemental Income Program Medical — Old Age Assistance.

(e) OSIPM-IC; Oregon Supplemental Income Program Medical — Independent Choices

(25) The Post-TANF program provides a monthly transitional payment to employed clients who are no longer eligible for the Pre-TANF or TANF programs due to earnings, and meet the other eligibility requirements.

(26) The Pre-TANF program is an up-front assessment and resource-search program for TANF applicant families. The intent of the program is

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to assess the individual's employment potential; determine any barriers to employment or family stability; develop an individualized case plan that promotes family stability and financial independence; help individuals find employment or other alternatives; and provide basic living expenses immediately to families in need.

(27) QMB; Qualified Medicare Beneficiaries. Additional medical coverage for Medicare recipients. When used alone, QMB refers to all QMB programs. The following codes are used for QMB subprograms:

(a) QMB-BAS; Qualified Medicare Beneficiaries — Basic. The basic QMB program.

(b) QMB-DW; Qualified Medicare Beneficiaries — Disabled Worker. Payment of the Medicare Part A premium for people under age 65 who have lost eligibility for Social Security disability benefits because they have become substantially gainfully employed.

(c) QMB-SMB; Qualified Medicare Beneficiaries — Special Medicare Beneficiary. Payment of all or a portion of the Medicare Part B premium only. There are no medical benefits available through QMB-SMB.

(28) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples without children.

(29) REFM or REFM-BAS; Refugee Assistance Medical - Basic. Medical coverage for low-income refugees.

(30) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.

(31) SAC; Medical Coverage for Children in Substitute or Adoptive Care.

(32) Senior Prescription Drug Assistance Program; provides that people 65 years of age or older can purchase prescription drugs at the Medicaid price.

(33) SFDNP; Senior Farm Direct Nutrition Program. Food vouchers for low income seniors. Funded by a grant from the United States Department of Agriculture.

(34) SFPSS; State Family Pre-SSI/SSDI Program. A voluntary program providing cash assistance and case management services to families when at least one TANF eligible adult in the household has an impairment (see OAR 461-125-0260) and is or will be applying for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).

(35) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Addresses the needs of clients threatened by domestic violence.

(36) TANF; Temporary Assistance for Needy Families. Cash assistance for families when children in those families are deprived of parental support because of continued absence, death, incapacity, or unemployment. Cash assistance used to be known as ADC.

Stat. Auth.: ORS 411.060, 411.816, 414.042, 414.342, 418.100, 2007 OL 861
Stats. Implemented: ORS 411.060, 411.816, 414.042, 414.342, 418.100, 2007 OL 861
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 17-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-105-0010

Rights of Clients

Clients of the Department in programs regulated by Chapter 461 of these rules have the following rights and the right to be informed of them:

(1) The right to information about the programs administered by the Department.

(2) The right to confidentiality for individually identifiable information to the extent provided under federal and state law, including the administrative rules of the Department.

(3) The right to refuse social services unless--

(a) The service is court-ordered;

(b) The service is related to a case plan as defined in OAR 461-001-0020 or 461-001-0025; or

(c) Treatment is required under OAR 461-135-0085.

(4) In the Pre-TANF, REF, SFPSS, and TANF programs:

(a) The right to be offered or request available screenings or evaluations at any time that identify barriers (see OAR 461-001-0025) or the existence of a disability (see OAR 461-001-0000), extent of the disability, or need for accommodations, or modifications relevant to the program.

(b) The right to decline a screening or evaluation that would disclose to the program the existence of a disability (see OAR 461-001-0000) unknown to the program.

(5) The right, at any time, to obtain the Department's standard form for requesting a hearing.

(6) The right to request a hearing to the extent provided in OAR 461-025-0310 and 461-025-0315.

(7) The right to request and receive an application to apply for any program administered by the Department.

(8) The right to have a decision on eligibility made by the Department within the timelines set forth in OAR 461-115-0190 and 461-115-0210.

(9) The right to apply for and receive benefits and services from the Department and its contractors, grantees, agents, and providers of services who receive payments from the Department without discrimination on the basis of race, color, national origin, religion, gender, sexual orientation, disability, or political beliefs (see OAR 461-105-0180 and 461-105-0190).

(10) The right to courteous, fair, and dignified treatment by Department personnel and to file a complaint with the Department about staff conduct or customer service to the extent provided in OAR 407-005-0100 to 407-005-0120.

(11) The right to file a complaint with the Department about discrimination or unfair treatment as provided in Procedure DHS-010-005-01, "Filing a Client Complaint or Report of Discrimination" or OAR 407-005-0030.

Stat. Auth.: ORS 411.060, 411.816, 418.040, 418.045, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.040, 418.045, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-110-0630

Need Group

(1) The need group consists of the individuals whose basic and special needs are used in determining eligibility and benefit level.

(2) In the EA, REF, and REFM programs, the need group consists of the members of the *financial group* (see OAR 461-110-0530) who meet all nonfinancial eligibility requirements, except that members disqualified for an intentional program violation are not in the need group.

(3) In the ERDC, OSIP, OSIPM, QMB, and SAC programs, the need group consists of each member of the financial group.

(4) In the EXT program, the need group consists of each member of the financial group except an individual excluded from the need group for not complying with social security number requirements under OAR 461-120-0210.

(5) In the FS program, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements, except the following people are not in the need group:

(a) A member disqualified for an intentional program violation.

(b) A fleeing felon under OAR 461-135-0560.

(c) An individual violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(6) In the GA and GAM programs, the need group consists of each member of the financial group except that the following individuals may not be in the need group:

(a) A fleeing felon under OAR 461-135-0560.

(b) An individual in violation of a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(c) An individual not complying with social security number requirements under OAR 461-120-0210.

(7) In the MAA and TANF programs, the need group is formed as follows:

(a) Except as provided in subsection (b) of this section, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements other than the citizenship and alien status requirements of OAR 461-120-0110 or the citizenship documentation requirements of OAR 461-115-0705.

(b) The need group cannot include:

(A) A parent who is in foster care and for whom foster care payments are being made.

(B) An unborn child.

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(C) In the TANF program:

(i) An individual who cannot be in the need group because of a disqualification penalty.

(ii) An individual who cannot be in the need group because the individual has exceeded the 60-month time limit and does not meet any of the exceptions listed in OAR 461-135-0075.

(iii) A fleeing felon under OAR 461-135-0560.

(iv) An individual violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(8) In the MAF program, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements other than the citizen and alien status requirements of OAR 461-120-0110 or the citizenship documentation requirements of OAR 461-115-0705, except for the following individuals:

(a) A parent who is in foster care and for whom foster care payments are being made.

(b) The father of an unborn child who has no eligible dependent children.

(9) In the OHP program:

(a) An unborn child of a pregnant female is included in the need group.

(b) The need group consists of each member of the financial group except an individual excluded from the need group for not complying with social security number requirements under OAR 461-120-0210.

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 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 6-1991(Temp), f. & cert. ef. 2-8-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-115-0030

Date of Request

(1) For all programs covered by Chapter 461 of the Oregon Administrative Rules, the client or someone authorized to act on behalf of the client must contact the Department or use another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. The request starts the application process.

(2) The *date of request* is one of the following:

(a) In the EA, ERDC-BAS, GA, OSIP, REF, and TANF programs and for support service payments in the JOBS program authorized by OAR 461-190-0211, the date of request is the day the request for benefits is received by the Department.

(b) In the ERDC-SBG program, the date of request is the date the Department sends the client a notice of the right to apply, along with an application.

(c) In the FS program, this section does not apply. See OAR 461-115-0040.

(d) In the GAM, MAA, MAF, OHP, OSIPM, REFM, and SAC programs, the date of request is determined as follows:

(A) For a new applicant.

(i) The day the medical care began, if the actual request is made no later than the next working day. If the request is received later than the next working day, the date of request is the day the request is received by a Department representative, except as described in subparagraph (ii) of this paragraph.

(ii) In the OHP program, if the completed application is not received by the Department within 30 days of the date established in subparagraph (i) of this paragraph, the date of request is the date the written application is received by the Department.

(B) For a current recipient, the date of request is one of the following:

(i) The date the client reports a change requiring a redetermination of eligibility.

(ii) The date the Department initiates a review, except that the automatic mailing of an application does not constitute a Department-initiated review.

(iii) The date the client establishes a date of request by contacting the Department orally or in writing or by submitting an application.

(e) In the SFPSS program:

(A) Except as provided in paragraph (B) of this subsection, the date of request is the day the client signs the program's Interim Assistance Agreement.

(B) The *date of request* for support service payments is the day the request for benefits is received by the Department.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 414.042, 418.100, 2007 OL 861
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 418.100, HB 2469 (2007)
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-115-0190

Application Processing Time Frames; Not FS or Pre-TANF

(1) In all programs except the EA, FS, Pre-TANF, and TA-DVS programs, the Department determines eligibility and sends a decision notice (see OAR 461-001-0000) not later than the 45th day after the *date of request* (see OAR 461-115-0030). The Department may extend the period if one or more of the following subsections applies:

(a) Information needed to determine eligibility is expected to be received after the 45-day deadline, and the client has no control over the information.

(b) Other circumstances beyond the control of the client prevent the Department from making the decision within the 45-day period.

(c) In the OSIPM program, the applicant has met all eligibility requirements except the Department must determine whether the applicant is blind or has a disability. In this case, the Department determines eligibility and sends a decision notice not later than the 90th day after the date of request. The Department may extend this period for any of the following reasons:

(A) The Department cannot reach a decision because the client or an examining physician or psychologist has not taken an action necessary for the decision to be made.

(B) There is an administrative or other emergency beyond the Department's control that impairs its ability to make the decision.

(2) In the EA program, the Department determines eligibility within one working day of the date of application or as soon thereafter as verification of emergent need is completed. Verification of all other factors may be waived if it would delay the client's receipt of assistance.

(3) For support service payments in the JOBS program (authorized by OAR 461-190-0211) and in the SFPSS program, the Department determines eligibility as follows:

(a) If the client is receiving an SFPSS or TANF grant in time to meet the need for which the request is made and not later than the 30th day after the date of request.

(b) If the client is not covered by subsection (a) of this section--in time to meet the need for which the request is made.

(4) In the TA-DVS program, OAR 461-135-1220 covers the following time requirements:

(a) Assessing the client's safety concerns and offering options to the client for addressing immediate safety needs.

(b) Determining eligibility after the application is complete, whether or not the client has signed the application.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 414.042, 418.100, 2007 OL 861
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 418.100, 2007 OL 861
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 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-115-0430

Periodic Redeterminations; Not EA, ERDC, EXT, FS, OHP, REF, REFM, or TA-DVS

The Department periodically redetermines the eligibility of clients for benefits and assigns a redetermination date by which the next determination is required. The Department selects the redetermination date based on the client's circumstances and according to the following requirements:

(1) In the BCCM, GA, and GAM programs, the Department determines eligibility each 12 months.

(2) In the MAA, MAF, and SAC programs, the Department redetermines eligibility at least once every 12 months.

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(3) In the OSIP and OSIPM programs, the Department determines eligibility each 12 months for clients who are not eligible for SSI. No redetermination is required for clients who are eligible for SSI.

(4) In the QMB program, the Department determines eligibility each 12 months for clients who are not eligible for SSI. For QMB recipients who are also eligible for MAA, MAF or OSIPM, a redetermination for QMB is completed with the redetermination of the other program.

(5) In the SFPSS program, the Department redetermines eligibility at least once every 12 months. The Department redetermines program eligibility by redetermining eligibility for the TANF program.

(6) In the TANF program, the Department redetermines eligibility according to the following schedule:

(a) For clients not in the monthly reporting system (MRS) and not participating in the JOBS program — at least once every six months.

(b) For clients in the MRS or participating in the JOBS program — at least once every 12 months.

Stat. Auth.: ORS 411.060, 411.070, 414.042, 418.100, 2007 OL 861
Stats. Implemented: ORS 411.060, 411.070, 414.042, 418.100, 2007 OL 861
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 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 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; 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

461-115-0715

Required Verification; SFPSS

In the SFPSS program, all eligibility factors must be verified during the initial determination period, when there is a change to any factor, and whenever eligibility for benefits becomes questionable.

Stat. Auth.: ORS 411.060, 418.100, 2007 OL 861
Stats. Implemented: ORS 411.060, 418.100, 2007 OL 861
Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-120-0310

Assignment of Support Rights; Not BCCM, FS, OHP-CHP, OHP-OPP

(1) To be eligible for any program funded in whole or in part with federal grants under Titles IV-A (TANF) or IV-E of the Social Security Act, the filing group must assign to the state its right to receive, from any other person, child support that has accrued or that accrues while the group receives assistance, not to exceed the total amount of assistance paid.

(2) To be eligible for the EXT, MAA, MAF, OHP-OPC, OHP-OP6, and OSIPM programs, a filing group must assign to the state the right of any Medicaid-eligible child in the filing group to receive any cash medical support that accrues while the group receives assistance, not to exceed the total amount of assistance paid.

(3) Cash medical support received by the Department will be retained by the Department as is necessary to reimburse the Department for EXT, MAA, MAF, OHP-OPC, OHP-OP6, and OSIPM program medical assistance payments made on behalf of an individual with respect to whom such assignment was executed. Once yearly, the remainder of such amount retained will be paid to such individual.

Stat. Auth.: ORS 411.060, 411.070, 414.042, 418.042, 418.100
Stats. Implemented: ORS 411.060, 411.070, 414.025, 414.042, 418.035, 418.042, 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 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 12-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 3-29-07; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-120-0340

Client Required To Help Department Obtain Support From Noncustodial Parent; TANF

(1) To be eligible for TANF, except as permitted in section (2) of this rule, a caretaker relative (see OAR 461-001-0000) must make a good faith effort to help the Department:

(a) Establish paternity of each needy child; and
(b) Locate and obtain support payments from the noncustodial parent of each needy child.

(2) A caretaker relative is excused from the requirements of section (1) of this rule:

(a) For good cause defined in OAR 461-120-0350;
(b) If the caretaker relative is a participant in the Post-TANF or SFPSS programs; or

(c) The filing group (see OAR 461-110-0330) is a two-parent family for which deprivation is based on unemployment or underemployment of the primary wage earner.

(3) A good faith effort includes taking such actions as:

(a) Supplying sufficient information for the Division of Child Support (DCS) to proceed with appropriate actions to establish paternity of a dependent child, to locate noncustodial parents, or to establish a support order with respect to the child. Sufficient information includes, but is not limited to, the time and place of each child's conception (if paternity is not established) and the following information, if known to the caretaker relative, regarding any noncustodial parent of a needy child:

- (A) Full legal name and nicknames.
- (B) Social Security Number.
- (C) Current or last known address.
- (D) Current or last known employer, including name and address.
- (E) If a student, current or last known school.
- (F) Criminal record, including where and when incarcerated.
- (G) Date of birth, or age.
- (H) Race.
- (I) Any known group or organizational affiliations.
- (J) Names and addresses of close friends or relatives.

(K) Any other information the Department or DCS requests to help locate or identify an absent parent of any children in the benefit group.

(b) Supplying documentation or an explanation of the client's efforts to obtain information requested by the Department or DCS (if unable to provide any necessary information listed in subsection (a) of this section).

(c) Keeping appointments with the Department and DCS related to establishing paternity.

(d) Returning telephone calls and responding to correspondence when requested to do so by the Department or DCS.

(4) If a client who has not been excused under section (2) of this rule has the opportunity to make a good faith effort to help the Department establish paternity of a needy child or locate or obtain support payments from the noncustodial parent of a needy child (and is unable to show he or she has good cause under OAR 461-120-0350), the Department applies penalties for failure to comply with requirements of section (1) of this rule in the following manner until the client meets the requirements of this rule:

(a) For a benefit group (see OAR 461-110-0750) not currently receiving TANF, if the failure to comply occurs while an application for TANF is pending the filing group (see OAR 461-110-0330) is ineligible.

(b) For a benefit group receiving TANF benefits, if a failure to comply occurs, the net monthly TANF benefit, after reductions for the client's failure to comply with requirements of the JOBS program are made, is reduced by:

(A) 25 percent for the first month following the month in which failure to comply is determined.

(B) 50 percent for the second month following the month in which failure to comply is determined.

(C) 75 percent for the third month following the month in which failure to comply is determined.

(D) 100 percent (total ineligibility for the benefit group) for the fourth and subsequent months following the month in which failure to comply is determined.

(c) Once a penalized client complies with the requirements and benefits are no longer reduced under this rule, a subsequent penalty is imposed without regard to any prior penalty.

(d) If the TANF payment is affected by the penalty imposed under this rule, eligibility for and the level of food stamp benefits are determined as if the client were receiving cash benefits without reduction due to the penalty.

(5) The penalty provided by this rule ends when the client meets the requirements of section (1) of this rule.

Stat. Auth.: ORS 411.060, 411.070, 418.042, 418.100
Stats. Implemented: ORS 411.060, 411.070, 418.042, 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 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 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

ADMINISTRATIVE RULES

461-120-0345

Clients Required to Obtain Health Care Coverage and Cash Medical Support; EXT, GAM, MAA, MAF, OHP (except OHP-CHP), OSIPM, SAC

This rule explains the obligation of clients to obtain health care coverage and cash medical support for members of the *benefit group* (see OAR 461-110-0750) in the EXT, GAM, MAA, MAF, OHP (except OHP-CHP), OSIPM, and SAC programs.

(1) Unless excused from the requirements of this section for good cause defined in OAR 461-120-0350, each adult client must assist the Department and the Division of Child Support of the Department of Justice in establishing paternity for each of his or her children and obtaining an order directing the non-custodial parent (see OAR 461-001-0000) of a child (see OAR 461-001-0000) in the benefit group to provide:

- (a) Cash medical support for that child; and
- (b) Health care coverage for that child.

(2) Each adult client must make a good faith effort to obtain available coverage under Medicare.

(3) To be eligible for the EXT, GAM, MAA, MAF, OHP (except OHP-CHP and OHP-OPU), OSIPM, and SAC programs, once informed of the requirement, an individual who is able to must apply for, accept, and maintain cost-effective, employer-sponsored health insurance (see OAR 461-155-0360). In the GAM and OSIPM programs, the client is not required to incur a cost for the health insurance.

(4) In the OHP-OPU program:

(a) An individual who can obtain health insurance through his or her employer must cooperate in determining eligibility for the Family Health Insurance Assistance Program (FHIAP). Rules for FHIAP are at OAR 442-004-0000 and following. If eligible for FHIAP, the individual must:

(A) Apply for and accept the employer-sponsored health insurance.

(B) Enroll the other OHP-OPU recipients who are eligible for insurance through FHIAP.

(b) The requirements of subsection (a) of this section do not apply to:

- (A) Members of a federally recognized Indian tribe, band or group;
- (B) Eskimos, Aleuts or other Alaska natives enrolled by the Secretary

of the Interior pursuant to the Alaska Native Claims Settlement Act;

(C) Individuals eligible for benefits through an Indian Health Program; and

(D) Individuals eligible under the CAWEM program.

(5) An individual who fails to meet an applicable requirement in sections (1), (2), (3), or (4) of this rule is removed from the need group (see OAR 461-110-0630) except that in the OHP program the individual is removed from the benefit group (see OAR 461-110-0750).

(6) In the case of an individual failing to meet the requirements of section (1) of this rule, the Department applies the penalty after providing the client with notice and opportunity to show the provisions of OAR 461-120-0350 apply.

(7) The penalty provided by this rule ends when the client meets the requirements of this rule.

Stat. Auth.: ORS 411.060, 411.070, 414.042, 418.100, 2007 OL 861

Stats. Implemented: ORS 411.060, 411.070, 414.025, 414.042, 418.035, 418.100, 2007 OL 861

Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 30-1996, f. & cert. ef. 9-23-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; 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

461-125-0130

Evidence of Deprivation Based on Continued Absence; MAA, MAF, TANF

In the MAA, MAF, and TANF programs:

(1) There is deprivation based on continued absence (except as specified in OAR 461-125-0120) if the absent *parent* (see OAR 461-001-0000) is not living in the same home as the *dependent child* (see OAR 461-001-0000), per section (2) of this rule, and the visits of the absent parent with the dependent child in the child's home do not exceed four times per week or a total of 30 hours per week.

(2) The Department uses the following guidelines in deciding whether the absent parent is living in the same home as the dependent child:

(a) The absent parent is not living in the same home as the dependent child if either of the following is true:

(A) The absent parent and the dependent child have been living in separate homes for 30 days or more; or

(B) The absent parent and the dependent child have been living in separate homes for less than 30 days, but at least one of the following is true:

(i) The filing group was receiving TANF when the absent parent and dependent child began living in separate homes.

(ii) The client is a victim of domestic violence (see OAR 461-001-0000).

(iii) The parents have filed for divorce or legal separation.

(iv) The absent parent and dependent child have established separate verifiable residences.

(b) The absent parent is considered to be living in the same home as the dependent child if the absent parent sleeps at least 30 percent of the time during the calendar month in the child's home.

(c) If the absent parent is living on the same property as the dependent child, they are considered to be living in the same home as the dependent child, unless all the following are true:

(A) The absent parent is the owner of the property, or is a tenant on the property. To be a tenant, the absent parent must be billed for rent.

(B) The absent parent lives independently from the dependent child and caretaker relative (see OAR 461-001-0000).

(C) The absent parent:

(i) Has and uses sleeping, bathroom and kitchen facilities separate from the dependent child and caretaker relative; or

(ii) Shares bathroom or kitchen facilities with the dependent child and caretaker relative, but the facilities are in a commercial establishment that provides room or board or both at a fair market rate.

Stat. Auth.: ORS 411.060, 411.070, 414.042, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.117, 414.042, 418.100, 418.149

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 11-1999, f. & cert. ef. 10-1-99; 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

461-125-0260

Impairment Criteria; SFPSS

(1) To be eligible for the SFPSS program, an individual must be receiving TANF benefits and the Department has determined that the individual:

(a) Meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; or

(b) Meets the medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P, Appendix 2 for SSI; or

(c) Meets the definition of disability in 20 C.F.R. §§404.1505 or 416.905.

(2) If an individual is unable to do so, the Department will obtain medical evidence that documents a claim of physical or mental impairment.

Stat. Auth.: ORS 411.060, 418.100, 2007 OL 861

Stats. Implemented: ORS 411.060, 418.100, 2007 OL 861

Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-125-0810

Using Administrative Medical Examinations

(1) When the Department is responsible for making a decision of GA or SFPSS disability determination, OSIP or OSIPM disability or OSIP or OSIPM blindness, or TANF incapacity, the client may select a qualified medical provider to complete the medical evaluation described in OAR 461-125-0830.

(2) A decision to deny or end benefits must be reconsidered when additional medical documentation relevant to the decision is received by the Department within 30 days of the original effective date of denial or termination.

Stat. Auth.: ORS 411.060, 411.710, 418.100, 2007 OL 861

Stats. Implemented: ORS 411.060, 411.710, 418.100, 2007 OL 861

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; 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

461-130-0305

General Provisions

(1) This division of rules establishes requirements for client participation in the employment programs of the Food Stamp, Post-TANF, Pre-TANF, REF, and TANF programs. The employment programs are the JOBS, OFSET, and workfare programs.

(2) Clients must provide information necessary for the Department to administer the employment programs. The necessary information includes that needed to determine the client's participation classification (see OAR

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461-130-0310), assess the client's level of participation in the employment program, and assess whether a client had good cause (see OAR 461-130-0327) for any failure to meet a requirement of an employment program. If a medical condition is in question, the Department may require the client to provide a medical opinion from an appropriate medical professional.

Stat. Auth.: ORS 411.060, 411.816, 418.040, 418.045, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.040, 418.045, 418.100
Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-130-0310

Participation Classifications: Exempt, Mandatory, and Volunteer

(1) To administer the employment programs of the Food Stamp, Pre-TANF, REF, and TANF programs, the Department assigns clients to one or more participation classifications — *exempt*, *mandatory*, and *volunteer*.

(2) In the Food Stamp program:

(a) The following clients are *exempt*:

(A) A client with weekly countable income (see OAR 461-001-0000) from employment or self-employment (see OAR 461-145-0930) at least equal to the federal minimum wage multiplied by 30 hours. This includes migrant and seasonal farm workers (see OAR 461-001-0015) who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days.

(B) A client with a physical or mental condition that prevents performance of any work.

(C) A client who is responsible for the care of a dependent child (see OAR 461-001-0000) in the household under 6 years of age or an individual in the household who has a disability (see OAR 461-001-0015) that substantially reduces or eliminates the individual's ability to care for himself or herself.

(D) A client who provides care for at least 30 hours a week for an individual in another household who has a disability (see OAR 461-001-0015) that substantially reduces or eliminates the individual's ability to care for himself or herself.

(E) A client enrolled at least half-time, as defined by the school, in any high school or equivalent program recognized by a school district or enrolled at least half-time in any school, training program, or institution of higher education. Clients remain exempt during normal periods of class attendance, vacation and recess but no longer qualify for the student exemption when a break in enrollment occurs due to graduation, suspension or expulsion or when the student drops out of school or does not intend to register for the next normal school term (excluding summer term).

(F) A client receiving REF or TANF benefits, while a mandatory participant in the JOBS program.

(G) A client who is in receipt of unemployment insurance benefits or has completed an application for unemployment insurance benefits and is waiting for an initial decision on the claim, if the client was required to register for work at an office of the Oregon Employment Department.

(H) A participant in a drug or alcohol treatment and rehabilitation program.

(I) A pregnant client.

(J) A client living in an area where the OFSET program is available to clients but who:

(i) Lacks adequate dependent care;

(ii) Does not have adequate transportation available; or

(iii) Experiences a barrier to employment, such as being homeless or having a short-term physical or mental limitation or a serious family problem.

(b) A mandatory client is an individual in the need group (see OAR 461-110-0630); who is 16 or 17 years of age and a primary person (see OAR 461-001-0015), or 18 years of age and older but not yet 60; and who is not exempt under subsection (a) of this section.

(c) A volunteer is a client who is not a mandatory client who chooses to participate in an employment program.

(3) In the Pre-TANF, REF, and TANF programs:

(a) Except as stated otherwise in the following paragraphs, the following clients are exempt from participation and disqualification in the employment programs covered by Chapter 461:

(A) A client who is in the ninth month of pregnancy or experiencing medical complications due to pregnancy that prevent participation in employment or self-sufficiency components (see OAR 461-001-0025) of an employment program.

(B) A client during the first six months after giving birth except to participate in parenting classes or family stability activities (see OAR 461-001-0000).

(C) A client under 20 years of age during the first 16 weeks after giving birth except that the client may be required to participate in suitable activities with a preference for educational activities, parenting classes, and family stability activities.

(D) A parent (see OAR 461-001-0000) providing care for a family member, living in the home, who has a disability (see OAR 461-001-0000), and does not attend school full-time.

(E) An REF client 65 years of age or older.

(F) A TANF client 60 years of age or older.

(G) A non-citizen who is not authorized to work in the United States.

(H) A recipient of supplemental security income (SSI) from the Social Security Administration.

(I) A caretaker relative (see OAR 461-001-0000) who is non-needy.

(J) If participation is likely to cause undue hardship or is contrary to the best interests of the child (see OAR 461-001-0000) or needy caretaker relative.

(K) A client who participates more than 10 hours per week during the seventh and eighth months of pregnancy.

(L) A VISTA volunteer.

(b) A parent of a child who receives TANF is mandatory if the parent is in the same filing group (see OAR 461-110-0330) with the child (even if the parent is not in the TANF benefit group under OAR 461-110-0750), unless the parent is otherwise exempt from participation under subsection (a) of this section.

(c) A volunteer is a client who is exempt from participation (see subsection (a) of this section) who chooses to participate in an employment program.

(4) In the FS, REF, and TANF programs, a client may not be disqualified for conduct that occurred while a volunteer.

(5) In the Post-TANF program, a client is classified as a volunteer and may not be disqualified.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 418.040, 418.045, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.816, 418.040, 418.045, 418.100

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-130-0315

General Requirements; Pre-TANF, REF, TANF

In the Pre-TANF, REF, and TANF programs:

(1) A *mandatory* (see OAR 461-130-0310) client must do the following:

(a) Complete the assessment (see OAR 461-001-0025) process and provide sufficient information for the Department to determine whether they must participate in an employment program.

(b) Register for an employment program by completing forms provided by the Department. A mandatory client who fails to register is ineligible for benefits.

(c) Meet all participation requirements of OAR 461-130-0325.

(2) A *mandatory* client who fails to meet a participation requirement without good cause (see OAR 461-130-0327) is subject to disqualification in accordance with OAR 461-130-0330 only after the re-engagement process (see OAR 461-190-0231) has been completed. A mandatory client who is exempt (see OAR 461-130-0310) is not subject to disqualification but does not receive the incentive payment authorized by OAR 461-135-0210.

Stat. Auth.: ORS 411.060, 418.045, 418.100

Stats. Implemented: ORS 411.060, 418.045, 418.100

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-130-0323

General Provisions; SFPSS

In the SFPSS program:

(1) Clients are required to participate in the appropriate activities determined necessary by the Department, including activities that promote family stability. Disability, accommodation, and modification needs must be considered.

(2) Clients must provide information necessary for the Department to administer the program.

(a) The necessary information includes that needed to determine appropriate activities for the client and to assess whether a client had good cause (see OAR 461-130-0327) for any failure to meet a requirement of the program.

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(b) If a medical condition is in question, the Department will assist and may require the client to provide a medical opinion from a qualified and appropriate medical professional.

(3) The Department offers clients the opportunity to participate in any suitable JOBS program activity (see OAR 461-001-0025).

Stat. Auth.: ORS 411.060, 418.100, 2007 OL 861

Stats. Implemented: ORS 411.060, 418.100, 2007 OL 861

Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-130-0325

Participation Requirements; FS, REF, TANF

In the Food Stamp, REF, and TANF programs:

(1) A mandatory (see OAR 461-130-0310) client selected by the Department to participate in an employment program of the Food Stamp, REF, or TANF program must do all the following:

(a) Accept a bona fide offer of employment, whether temporary, permanent, full-time, part-time, or seasonal.

(b) Maintain employment.

(A) In the Food Stamp program, a client fails to maintain employment by:

(i) Voluntarily leaving a job 30 days or less prior to the date of application for food stamps or at any time thereafter,

(ii) Being dismissed for striking while a federal, state or county employee, or

(iii) Reducing hours of work to less than 30 each week.

(B) Sub-paragraph (A)(i) of this subsection applies only if the client is required to register for work, or is exempt from work registration due to employment according to OAR 461-130-0310(2)(a)(A), has a job that averages not less than 30 hours each week or has provided average weekly earnings not less than the federal minimum wage multiplied by 30 hours and quits the job, or quits working under a JOBS Plus agreement more than twice (see OAR 461-190-0426). Changes in employment status caused by a reduction in work hours while working for the same employer, being fired from a job, terminating a self-employment enterprise or resigning from a job at the demand of the employer do not constitute a failure to maintain employment.

(C) In the REF and TANF programs, a client fails to maintain employment when:

(i) The client has been or would be found to have quit work without good cause (OAR 461-130-0327) or to have been discharged for misconduct in accordance with the unemployment insurance compensation law of Oregon.

(ii) The client voluntarily reduces earnings or hours of employment or does not accept an increase in hours worked that would result in increased earnings.

(c) Schedule and keep required employment-related appointments and interviews.

(d) Notify the Department's case manager or the JOBS contractor of the reason for not keeping employment-related appointments and interviews, not attending scheduled classes and activities, or not completing case management activities. Notification must be made within three working days from the date of a missed appointment, interview, class, or activity.

(e) Provide the Department, in a manner as required, with verifiable documentation of JOBS participation hours, including paid work, job search, and educational participation hours.

(f) In the Food Stamp program, complete all work activities and components specified on the case plan (see OAR 461-001-0020).

(g) In the REF and TANF programs, complete all case management assignments specified on the case plan (see OAR 461-001-0025) or other similar plans approved by the Department.

(2) For clients receiving food stamps, a household containing a client who was exempt from participation in employment programs only by OAR 461-130-0310(2)(a)(F) or (G), but not any other provision, and who fails to comply with a requirement of the TANF or unemployment compensation program that is comparable to a requirement of an employment program of the Food Stamp program, must be treated as though the client had failed to comply with the corresponding requirement of the Food Stamp program employment program. If the client fails to comply with a requirement that is not comparable, the client loses the exemption authorized by OAR 461-130-0310(2)(a)(F) or (G) and must comply with the requirements of the Food Stamp program employment programs.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 418.040, 418.045, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.816, 411.825, 418.040, 418.045, 418.100

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 13-2002,

f. & cert. ef. 10-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-130-0327

Good Cause

(1) A client is excused for good cause from a failure to comply with a requirement of an employment program, including an activity in a case plan (both terms defined in OAR 461-001-0025) in the following circumstances:

(a) Participation in a required activity in a case plan would have an adverse effect on or risk to the client's physical or mental health or would expose the client to increased risk of domestic violence (see OAR 461-001-0000).

(b) Except in the Food Stamp program, participation is likely to cause undue hardship for the child (see OAR 461-001-0000) or the client.

(c) In the JOBS, Pre-TANF, and SFPSS programs, when the failure to comply is caused by the failure of the Department to timely provide or authorize a support service payment.

(d) Appropriate child care, or day care for an individual in the household who has a disability that substantially reduces or eliminates the individual's ability to care for himself or herself, cannot be obtained. "Appropriate child care" means that:

(A) Both the provider and the place where care is provided meet health, safety, and provider requirements as required in OAR 461-165-0180;

(B) The care accommodates the parent's work schedule; and

(C) The care meets the specific needs of the child, such as age and special-needs requirements.

(e) The work attachment position or employment offered is vacant due to a strike, lockout, or other labor dispute.

(f) The work attachment position or employment requires the client to join a union, and the client has religious objections to unions.

(g) The client belongs to a union and the employment violates the conditions of the client's membership in the union.

(h) The wage for the client's current or potential job is:

(A) Less than applicable minimum wage; or

(B) If minimum wage laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.

(i) The client's prospective employer engages in employment practices that are illegally discriminatory on the basis of age, sex, race, religious or political belief, marital status, disability, sexual orientation, or ethnic origin.

(j) The client's participation in a required activity in a case plan would prevent or interfere with the client's participation in an activity of the Grande Ronde Tribe's NEW program.

(k) The client's failure to participate is due to a circumstance beyond his or her reasonable control.

(l) When the failure to comply is caused by an aspect of the client's disability.

(m) The following are also "good cause" criteria in the Food Stamp program:

(A) The client has no means of transportation and would have to walk an unreasonable distance to meet the participation requirement. An "unreasonable distance" is a distance that requires a commute of more than two hours each day. The client must make a good-faith effort to secure the needed transportation.

(B) Lack of adequate child care for children who have reached age 6 but are under age 12.

(2) In the Food Stamp program, a client has good cause for not accepting employment or for leaving a job under the following circumstances:

(a) The hours or nature of the job interferes with the client's religious observances, convictions, or beliefs.

(b) The client accepts employment or enrolls at least half-time in any recognized school, training program, or institution of higher education that requires the client to quit a job.

(c) A client accepts employment or schooling in another county, requiring the benefit group to move and the client to quit a job.

(d) A client less than 60 years of age resigns, and the employer recognizes the resignation as retirement.

(e) The client leaves a job to follow a type of employment that moves from one area to another, such as migrant labor or construction.

(f) The client accepts a job that, for reasons beyond the control of the client, does not materialize or results in fewer work hours or a lower wage than the client's previous job.

(g) Work demands or conditions, such as not being paid for work or not being paid on schedule, make employment unreasonable.

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(h) The wage for the client's current or potential job is less than applicable minimum wage or, if minimum wage laws do not apply, the wage (rate for piece work) is less than that normally paid for similar work.

(i) The work schedule for the job in question does not conform to hours customary to the occupation or the hours worked each week are more than those customary to the occupation.

(j) The client is not obligated to accept a job during the first 30 days of registration for employment if the job is not in the client's field of experience.

(3) In the Pre-TANF, REF, REFM, SFPSS, and TANF programs, a client is excused from a failure to comply with a requirement of an employment program for good cause when the client is in her seventh or eighth month of pregnancy and either works in a job that requires her to work more than 10 hours each week or has a case plan that requires her to participate more than 10 hours each week.

(4) In the REF and REFM programs, a client is excused from a failure to comply with a requirement of an employment program for good cause in the following circumstances:

(a) The client quits a full-time job to accept another full-time job with a wage at least equal to the wage of the first job.

(b) The client makes a good faith effort to complete an activity on the case plan but is unable to do so.

(5) In the TANF program, a client is excused from a failure to comply with a requirement of an employment program for good cause when the client participates in suitable activities for the number of hours required each month to satisfy federally required participation rates (see OAR 461-001-0025).

(6) The Department does not require a client to provide verification of good cause if providing the verification would expose the client to increased risk of domestic violence.

Stat. Auth.: ORS 411.060, 411.816, 418.040, 418.045, 418.100
Stats. Implemented: ORS 411.060, 411.117, 411.816, 418.040, 418.045, 418.100
Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-130-0330

Disqualifications; FS, Pre-TANF, REF, TANF

(1) In the REF and TANF programs, clients may be disqualified for failure to comply with requirements of employment programs. A disqualification is initiated only after the client has had an opportunity to participate in the *re-engagement* process (see OAR 461-190-0231).

(a) The Department does not apply a JOBS disqualification until:

(A) The Department has determined the client is willfully non-compliant and does not have good cause (see OAR 461-130-0327) for failing to comply with a requirement of the program;

(B) The Department has offered (and the client has refused) or conducted screenings (and assessed if appropriate) for physical or mental health needs, substance abuse, domestic violence, and learning needs;

(C) The Department has determined the client has no barriers (see OAR 461-001-0025) or refuses to take appropriate steps to address identified barriers;

(D) The Department has determined the client has not met federally required participation rates (see OAR 461-001-0025); and

(E) The Department has assessed for any risk of harm posed to the children by a reduction in cash assistance.

(b) The effects of a JOBS disqualification are progressive. Except as provided in section (2) of this rule, once a disqualification is imposed, it affects benefits according to the following schedule until the disqualification ends in accordance with OAR 461-130-0335:

(A) There are four levels of disqualification and one month of disqualification for each level.

(B) At the first through third levels, the penalty is removal of the disqualified client from the need group (see OAR 461-110-0630).

(C) At the fourth level, the need group receives no cash benefit in the TANF program.

(2) Applicants for TANF and participants in the Pre-TANF program who are disqualified for failure to comply with requirements of an employment program are treated the same as recipients under section (1) of this rule.

(3) In the Food Stamp program, the effects of disqualifications are progressive. Mandatory clients who fail to meet the requirements of a Food Stamp employment program are removed from the need group until they meet the program requirements and for a minimum of:

(a) For the first failure, one calendar month.

(b) For the second failure, three calendar months.

(c) For the third and subsequent failures, six calendar months.

Stat. Auth.: ORS 411.060, 411.816, 418.045, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.045, 418.100
Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-130-0335

Removing Disqualifications; Effect on Benefits

(1) An applicant who would be subject to disqualification but withdraws the application before benefits are approved is not subject to disqualification.

(2) In the Food Stamp and TANF programs, a filing group (see OAR 461-110-0330 and 461-110-0370) is not subject to disqualification due to a member's conduct if that individual leaves the household. Should the member join another filing group, that group is subject to the member's most recent disqualification.

(3) In the Food Stamp program, the disqualification ends the first day of the month following the month in which information is provided to the Department justifying the change in the client's participation classification, even if the date falls within the disqualification period provided in OAR 461-130-0330(3).

(4) REF and TANF clients who are disqualified for failure to meet requirements of the JOBS program must comply before the disqualification can be removed.

(a) When the Department removes a disqualification due to a client's compliance with participation requirements and completion of a two-week cooperation period specified in a new case plan, the client is eligible for cash benefits effective the date the client agreed to re-engage.

(b) If a client requests an opportunity to comply with the participation requirements prior to the effective date of a proposed disqualification, the Department will amend the case plan (see OAR 461-001-0025) to enable the client to comply with the requirements for the time remaining until the effective date of disqualification. If the client meets participation requirements during that period, the disqualification penalty is not imposed but the month in which the disqualification penalty was to be imposed counts as a month of disqualification.

(c) On or after the date the disqualification was proposed to take effect, a client who states to an appropriate employee of the Department a desire to cooperate with participation requirements must be assigned a two-week cooperation period. The client must complete a new case plan before cash benefits are restored. The disqualification ends after the client participates in the two-week cooperation period.

(d) For a client who completes the two-week cooperation period described in subsection (c) of this section, the disqualification ends and only one month of the penalty imposed counts as a disqualification.

(5) In the TANF program, a disqualification ends when the Department changes the participation classification of the disqualified individual to exempt (see OAR 461-130-0310) or when the client complies with the requirements of the employment program (see section (4) of this rule). For a client who becomes exempt, the disqualification ends on the first day of the month in which the client informs the Department of the facts that justify the change.

Stat. Auth.: ORS 411.060, 411.816, 418.045, 418.100
Stats. Implemented: ORS 411.060, 411.816, 418.045, 418.100
Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-135-0010

Assumed Eligibility for Medical Programs

(1) This rule sets out when a client is assumed eligible for certain medical programs because the client receives or is deemed to receive benefits of another program.

(2) Except for a client in a two-parent family for which deprivation is based on unemployment or underemployment of the primary wage earner; a client disqualified for failure to pursue cost-effective, employer-sponsored health insurance as required by OAR 461-120-0345; a client who does not meet the citizenship and alien status requirements set forth in OAR 461-120-0125; and a client who does not meet a citizenship verification requirement set forth in OAR 461-115-0705, the following individuals are assumed eligible for MAA:

(a) A client receiving or eligible to receive TANF cash benefits.

(b) A client whose TANF cash benefits are being paid as wages through the JOBS Plus program.

(c) A client who receives no TANF cash benefits because of failure by the client to comply with the requirements for a recipient of the JOBS pro-

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gram, or a requirement for evaluation or treatment of substance abuse or mental health (OAR 461-135-0085).

(d) A client in the Pre-TANF program (see OAR 461-135-0475).

(e) A child in a benefit group (see OAR 461-110-0750) whose grant is affected by a failure to comply with the requirements of OAR 461-120-0340 regarding paternity or child support.

(3) A pregnant woman who is eligible for and receiving benefits the day the pregnancy ends is assumed eligible for EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC until the last day of the calendar month in which the 60th day after the last day of the pregnancy falls.

(4) A pregnant woman who was eligible for and receiving benefits of the EXT, GAM, MAA, MAF, OHP-OPP, OSIPM, or SAC program but becomes ineligible during the pregnancy is assumed eligible for Medicaid.

(5) A child born to a mother eligible for and receiving EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC benefits is assumed eligible for medical benefits. A child who is continuously a member of the household group of his or her mother is eligible under this section until the end of the month the child turns one year of age.

(6) Except for a child who does not meet a citizenship verification requirement set forth in OAR 461-115-0705, the following children are assumed eligible for SAC:

(a) A child who is the subject of an adoption assistance agreement with another state.

(b) A child in a state-subsidized, adoptive placement, if an adoption assistance agreement is in effect between a public agency of the state of Oregon and the adoptive parents that indicates the child is eligible for Medicaid.

(7) The following individuals are assumed eligible for OSIPM (except OSIPM-EPD and OSIPM-EPD):

(a) A recipient of SSI benefits.

(b) An individual deemed eligible for SSI under Sections 1619(a) or (b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)), which cover individuals with disabilities whose impairments have not changed but who have become gainfully employed and have continuing need for OSIPM.

(c) An individual described in subsection (a) or (b) of this section who is in a nonstandard living arrangement (see OAR 461-001-0000) is not eligible for long-term care (see OAR 461-001-0000) services if the individual would otherwise be ineligible for OSIPM due to a disqualifying transfer of assets (OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client).

(8) A client who receives both benefits under Part A of Medicare and SSI benefits is assumed eligible for the QMB-BAS program.

(9) A client is assumed eligible for REFM if:

(a) The client is receiving cash assistance through the REF program;

(b) The client loses eligibility for cash assistance through the REF program only because of income or resources;

(c) The client loses eligibility for the EXT, MAA, MAF, or SAC programs, but still meets the requirements of the REFM program; or

(d) The client had refugee-related medical assistance established in another state based on refugee status granted by the United States Citizenship and Immigration Services, and moved to Oregon within the client's first eight months in the United States.

Stat. Auth.: ORS 411.060, 411.070, 414.042, 418.100

Stats. Implemented: ORS 411.060, 411.070, 414.042, 418.100, 1999 OL ch. 859

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 12-1999(Temp), f. & cert. ef. 10-1-99 thru 1-31-00; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-135-0070

Specific Requirements; MAA, MAF and TANF

(1) To be eligible for the MAA, MAF, or TANF programs, a client must be one of the following:

(a) A *dependent child* (see OAR 461-001-0000). However, dependent children for whom foster care payments are made for more than 30 days are not eligible while the payments are being made for them.

(b) A *caretaker relative* (see OAR 461-001-0000) of an eligible dependent child. However, caretaker relatives to whom foster care payments are made for more than 30 days are not eligible while the payments are being made for them.

(c) A caretaker relative of a dependent child, when the dependent child is ineligible for MAA, MAF, or TANF because of one of the following reasons:

(A) The child is receiving SSI.

(B) The child is in foster care, but is expected to return home within 30 days.

(C) The child is ineligible for MAA or MAF because citizenship has not been documented (see OAR 461-115-0705).

(d) An essential person. An essential person is a member of the household group (see OAR 461-110-0210) who:

(A) Is not required to be in the filing group;

(B) Provides a service necessary to the health or protection of a member of the benefit group (see OAR 461-110-0750) who has a mental or physical disability; and

(C) Is less expensive to include in the benefit group than the cost of purchasing this service from another source.

(e) A parent of an unborn, as follows:

(A) For TANF and MAA, any parent whose only child is an unborn child once the mother's pregnancy has reached the calendar month before the month in which the due date falls.

(B) For the TANF and MAA programs, the father of an unborn child, if there is another dependent child in the filing group.

(C) For MAF, a mother whose only child is an unborn once the mother's pregnancy has reached the calendar month immediately before the month in which the due date falls.

(2) A client is eligible for MAA or MAF if the client is:

(a) Eligible for MAA or MAF under OAR 461-135-0010; or

(b) A minor parent (see OAR 461-001-0000) ineligible for TANF only because:

(A) The minor refuses to live with a parent or legal guardian as required by OAR 461-135-0080; or

(B) The income of the minor exceeds the income standards because the Department required the minor to return to live with a parent, if the minor parent meets the conditions in OAR 461-135-0080(2).

(3) Clients are eligible for MAF even while ineligible for TANF if they are ineligible for TANF only because they are:

(a) Families who would be eligible for the TANF program if they were allowed the following deductions from income:

(A) The earned income deductions authorized by OAR 461-160-0190.

(B) The unearned income support deduction authorized by OAR 461-160-0200.

(b) Self-employed families who would be eligible for TANF if the cost of producing the self-employment income were subtracted from their gross sales or receipts in accordance with OAR 461-145-0920.

(c) Families that include an ineligible non-citizen or the father of an unborn who would be eligible for TANF if the ineligible non-citizen's or father's income is counted in accordance with OAR 461-160-0120.

(d) Individuals who would be eligible for TANF if the assets of the following household members were not counted:

(A) An unmarried parent of a dependent child or unborn in the eligibility group.

(B) A child in common of parents in the eligibility group.

(C) The spouse and children of a caretaker relative in the need group (see OAR 461-110-0630).

(e) The spouse of a caretaker relative, but only if the spouse is the parent of a dependent child.

(4) A family is ineligible for TANF if the family meets the requirements of all of the following subsections:

(a) The family lives in Klamath County.

(b) The family meets any of the following conditions:

(A) The family has a single custodial parent who is a member of the Klamath Tribes, or the single custodial parent is not a Klamath Tribes member and at least 50 percent of the dependent children are Klamath Tribes members;

(B) The family has two custodial parents who are members of the Klamath Tribes, or only one of the two custodial parents is a Klamath Tribes member and at least 50 percent of the dependent children are Klamath Tribes members; or

(C) The family has a caretaker relative who is not the custodial parent and at least 50 percent of the dependent children are Klamath Tribes members.

(c) The family is eligible for the Klamath Tribes TANF program or would be eligible for the Klamath Tribes TANF program if not for the failure of the family to cooperate with program requirements.

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(5) A family is ineligible for TANF if all of the following subsections apply to the family:

(a) A parent, caretaker relative, or child is a member of the Siletz Tribe (Confederated Tribes of Siletz Indians of Oregon) and lives in one of the eleven service area counties: Benton, Clackamas, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, or Yamhill counties.

(b) The family includes members who are living in the same household and at least one of the following paragraphs applies:

(A) A two-parent family with one enrolled Siletz tribal member with a shared dependent.

(B) A single-parent family with one enrolled Siletz tribal member.

(C) A non-needy caretaker relative or essential person with one enrolled Siletz tribal member who is a minor.

(D) A pregnant enrolled Siletz tribal member in her eighth month of pregnancy.

(c) The family is eligible for the Siletz Tribes TANF program or would be eligible for the Siletz Tribes TANF program if not for the failure of the family to cooperate with Siletz TANF program requirements.

(6) If a parent or caretaker relative covered by section (4) or (5) of this rule fails to follow through with a Department referral to the Klamath or Siletz Tribal TANF program, the entire filing group is ineligible for TANF

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 414.047, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 4-30-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 26-1998(Temp), f. 12-30-98, cert. ef. 1-1-99 thru 3-31-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-135-0075

Limitation on Eligibility Period; TANF

(1) A minor parent head of household or an adult may not receive a TANF grant in Oregon if the minor parent head of household or adult has received a TANF grant in excess of 60 months except as allowed in this rule.

(2) The following months do not count toward the time limit in section (1) of this rule:

(a) Months prior to July 1, 2003 in which a minor parent head of household or an adult received a TANF grant in Oregon or another state.

(b) Months between July 1, 2003 and September 30, 2007 in which a minor parent head of household or adult received TANF in Oregon; and

(A) Participated in required JOBS activities or other education, employment, or job training program including teen parent programs; or

(B) Was not required to participate in JOBS activities or other education, employment, or job training program including teen parent programs.

(c) Months beginning July 1, 2003 in which the family resided in Indian Country (as defined in 18 U.S.C. 1151) and 50 percent or more of the adult residents of that area were unemployed.

(d) Months beginning October 1, 2007 in which the minor parent head of household or adult is a participant in the Oregon JOBS Plus, Pre-TANF, Post-TANF, or SFPSS programs.

(e) Months beginning October 1, 2007 in which the filing group (see OAR 461-110-0330) is a two-parent family receiving cash assistance in Oregon for which deprivation is based on unemployment or underemployment of the primary wage earner.

(f) Months beginning October 1, 2007 in which the individual who is now a parent or pregnant was in that month a minor child and neither the head of a household nor married to the head of a household.

(g) Months beginning October 1, 2007 in which a minor parent head of household or adult receives aid in Oregon and is a participant in the Degree Completion Initiative (DCI) activity (see OAR 461-001-0025) enrolled in an educational institution consistent with OAR 461-190-0195.

(h) Months beginning October 1, 2007 in which the individual is unable to obtain or maintain employment for a sufficient number of hours in a month to satisfy the federally required participation rates (see OAR 461-001-0025) because the individual:

(A) Is a victim of domestic violence (see OAR 461-001-0000);

(B) Has a certified learning disability;

(C) Has a verified alcohol and drug or mental health condition;

(D) Has a disability (see OAR 461-001-0000);

(E) Has a child with a disability, which prevents the parent from obtaining or keeping employment;

(F) Is caring for a family member who has a disability, is in the home, and is not attending school full-time;

(G) Is deprived of needed medical care; or

(H) Is subjected to battery or extreme cruelty. For purposes of this rule, an individual is subjected to battery or extreme cruelty if the individual has been subjected to one or more of the following:

(i) Physical acts that resulted in, or threatened to result in, physical injury to the individual.

(ii) Sexual abuse.

(iii) Sexual activity involving a dependent child.

(iv) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.

(v) Threats of, or attempts at, physical or sexual abuse.

(vi) Mental abuse.

(vii) Neglect or deprivation of medical care.

(3) Months that do not count toward the time limit based on a condition described in paragraphs (2)(h)(B) to (2)(h)(F) of this rule require documentation from a licensed or certified professional qualified to make such a determination.

(4) A minor parent head of household or an adult may not be denied a TANF grant under section (1) of this rule during months that qualify as exempt from time limits under sections (2), and (3) of this rule.

(5) Each minor parent head of household and adult who qualifies for a TANF grant under this rule must also meet all other TANF eligibility requirements and cooperate with the requirements of his or her case plan, unless good cause (see OAR 461-130-0327) exists.

(6) Except as provided otherwise in section (4) of this rule, a minor parent head of household or an adult in the benefit group who exceeds the 60-month time limit is removed from the need group (see OAR 461-110-0630). When a minor head of household or adult is removed from the need group under this section, the remaining need group members may continue to receive TANF benefits.

(7) If a minor parent head of household or adult qualifies under sections (2), (3), or (4) of this rule, any disqualifications that have been accrued for the benefit group remain in place.

Stat. Auth.: ORS 411.060, 418.100, 418.131

Stats. Implemented: ORS 411.060, 411.117, 418.100, 418.131

Hist.: AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-135-0085

Requirement to Seek Treatment for Substance Abuse and Mental Health; Disqualifications and Penalties

In the Pre-TANF, REF, SFPSS, and TANF programs:

(1) When directed by the Department, a member of a need group (see OAR 461-110-0630) must participate in:

(a) An evaluation for substance abuse if the individual has self-identified the illegal use of a controlled substance and the evaluation is at no cost to the individual.

(b) An evaluation for mental health if the individual states that within the previous twelve months, a qualified and appropriate professional has diagnosed the individual with a mental health diagnosis, and the evaluation is at no cost to the individual.

(c) Treatment for substance abuse if:

(A) An evaluation has resulted in a diagnosis that requires treatment; and

(B) Treatment is available at no cost to the individual.

(d) Treatment for mental health if:

(A) An evaluation has resulted in a mental health diagnosis that requires treatment; and

(B) Treatment is available at no cost to the individual.

(2) Individuals are responsible for providing information needed by the Department to determine their need for services related to substance abuse or mental health problems and whether the individual had good cause (see OAR 461-135-0087) for failing to meet the requirements of this rule. If a medical condition of the individual must be determined in regard to the requirements of this rule, the Department will assist the client in obtaining a medical opinion from an appropriate medical professional.

(3) In the Pre-TANF, REF, and TANF programs:

(a) An individual who refuses to participate in a required evaluation or treatment provided for in this rule is subject to disqualification in accordance with this section and OAR 461-130-0330 only after the individual has had an opportunity to participate in the re-engagement process (see OAR 461-190-0231) that includes a determination by the Department of whether the individual had good cause. The penalties are progressive and, once imposed, continue as long as the individual refuses to participate, without regard to the individual's change to or from the exempt classifica-

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tion in the JOBS program (see OAR 461-130-0310). There are four levels of disqualifications or penalties as follows:

(A) At the first through third levels, the noncompliant individual is removed from the need group.

(B) At the fourth level, the need group receives no cash benefit in the TANF program.

(b) A month is counted as a month of penalty if it is a month in which:

(A) The individual is penalized for one or more days; or

(B) A penalty would have become effective, if the individual had not complied with the requirements of this rule before the effective date in the notice of disqualification.

(4) In the SFPSS program, an individual who refuses to participate in a required evaluation or treatment provided for in this rule is subject to the provisions of OAR 461-190-0231(9) only after the individual has had an opportunity to participate in the re-engagement process as outlined in OAR 461-190-0231(1) through (8).

(5) For the purpose of this rule:

(a) "Controlled substances" means a drug or its immediate precursor classified in Schedules I through V under the federal Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under ORS 475.035. The use of the term "precursor" in this subsection does not control and is not controlled by the use of the term "precursor" in ORS 475.840 to 475.980. Alcohol is not a controlled substance.

(b) "Self-identifying the current illegal use of a controlled substance" means an individual states that he or she has used a controlled substance within the previous thirty days, and the Department reasonably believes that the individual may use controlled substances within the following thirty days. This does not include the use of controlled substances pursuant to a valid prescription, or other uses that are authorized by the Uniform Controlled Substances Act, ORS 475.005 to 475.285 and 475.840 to 475.980, the federal Controlled Substances Act, or other Federal law.

Stat. Auth.: ORS 411.060, 418.040, 418.100, 418.134, 2007 OL 861

Stats. Implemented: ORS 411.060, 418.040, 418.100, 418.134, 2007 OL 861

Hist.: AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04; 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

461-135-0089

Demonstrating Compliance with Substance Abuse and Mental Health Requirements; Restoring Cash Benefits

(1) In the Pre-TANF, REF, and TANF programs:

(a) In order to end a penalty imposed under OAR 461-135-0085, a client must be assigned a two-week cooperation period and complete a *new case plan* (see OAR 461-001-0025) before cash benefits are restored. The client must demonstrate a willingness to participate in treatment required under OAR 461-135-0085.

(b) If the client demonstrates a willingness to participate after receiving a notice of disqualification but before the effective date of the penalty, the penalty is considered as having been imposed for one month.

(c) When the Department removes a penalty due to a client's cooperation with the requirements under OAR 461-135-0085, cash benefits are restored back to the date the client agreed to re-engage. The timing for removing the penalty and restoring benefits is as follows:

(A) For the first level of penalty, if an appropriate treatment is not available within the two-week cooperation period, the client's willingness to participate is sufficient to end the penalty.

(B) For the second and third levels of penalty, after the client demonstrates cooperation for two weeks.

(C) For the fourth level of penalty, the client must follow through with the referral and treatment program requirements for two weeks to be eligible for cash benefits.

(2) In the SFPSS program, in order to end the penalty the individual must agree to participate in the required evaluation or treatment pursuant with OAR 461-135-0085. If the individual agrees to participate prior to the implementation of the penalty, the individual will not be subject to the provisions of OAR 461-190-0231(9). If the individual agrees to participate after the implementation of the penalty found in OAR 461-190-0231, the individual must be referred back to the program for eligibility determination.

Stat. Auth.: ORS 411.060, 418.100, 2007 OL 861

Stats. Implemented: ORS 411.060, 418.100, 418.134, 2007 OL 861

Hist.: AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; 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

461-135-0200

Multiple Disqualifications, Change in JOBS Status; TANF

(1) This rule describes the method for calculating the net TANF benefit when a client's benefits are affected by the penalty provided in division 130 of this chapter of rules for failure to comply with the requirements of a *case plan* (see OAR 461-001-0025) or the penalty provided by OAR 461-135-0085 and, during the same month, by a concurrent penalty related to child support or a penalty related to recovery from third parties (OAR 461-120-0340 and 461-120-0345 respectively).

(2) If the concurrent penalty relates to child support, during the first three months that the penalties are both applied, the penalty related to the case plan or to OAR 461-135-0085 is applied first, and the concurrent penalty is then applied. During the fourth and successive months, the clients are ineligible for TANF benefits.

(3) If the concurrent penalty relates to recovery from third parties, during the first three months that the penalties are both applied, only the penalty related to third-party recovery is applied. During the fourth and subsequent months, the penalty related to third-party recovery continues and the benefit group (see OAR 461-110-0750) is ineligible for TANF benefits.

(4) A penalty imposed under OAR 461-135-0085 remains in effect when a client becomes mandatory (see OAR 461-130-0310) while serving the penalty.

Stat. Auth.: ORS 411.060, 418.040, 418.100

Stats. Implemented: ORS 411.060, 418.040, 418.100

Hist.: AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 17-2004, f. & cert. ef. 7-1-04; 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

461-135-0475

Specific Requirements; Pre-TANF Program

(1) This rule explains specific requirements for the Pre-TANF program. The eligibility criteria of the Pre-TANF program are the same as the TANF program. The purposes of the Pre-TANF program are:

(a) To help individuals find employment or other alternatives;

(b) To assess the employment potential of clients;

(c) To help clients determine the services needed to enhance their employability and their likelihood of becoming self sufficient;

(d) To determine if a needy caretaker relative (see OAR 461-001-0000) has or may have a barrier to employment or to family stability.

(e) To develop an individualized case plan (see OAR 461-001-0025) that establishes goals and identifies suitable activities (see OAR 461-001-0025) that promote family stability and financial independence.

(f) To provide basic living expenses immediately to families in need.

(2) Applicants for the TANF program whose unverified application indicates the client meets the TANF eligibility requirements participate in the Pre-TANF program. Their applications for the TANF program are also considered applications for the Pre-TANF program. The Pre-TANF program is open for not longer than 45 days following the date of request (see OAR 461-115-0030).

(3) Clients in the Pre-TANF program are subject to the requirements of the JOBS program, described in divisions 130 and 190 of this chapter of rules, and they are subject to the requirements of OAR 461-135-0085 pertaining to substance abuse and mental health.

(4) Once a client is found eligible for the Pre-TANF program, the client participates in initial screenings to determine the client's employment strengths and to determine if the client has any barriers to employment or family stability. If the screening indicates that there is or may be a barrier, the needy caretaker relative is referred for an in-depth evaluation by a person with relevant expertise or specialized training. The client and the Department prepare a case plan that specifies the basic living expenses and support service payments the client will receive through the Pre-TANF program and lists the activities of the client. The case plan may be adjusted at any time while the client is in the Pre-TANF program to reflect changing needs.

(5) Clients in the Pre-TANF program receive assistance, listed in the case plan, for basic living expenses, and the Department makes support service payments listed in the case plan, as follows:

(a) The Department will provide the client with basic living expenses necessary to stabilize the household so the client can accomplish the activities in the case plan. Basic living expenses covered by this section are limited to the current need of the client for shelter, utilities, household supplies (other than food), and personal incidentals that the client cannot meet with other, immediately available resources. Payments under this subsection are limited to 200 percent of the payment standard for the benefit group (see OAR 461-155-0030(2)). Payment for "past expenses" is made only when

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the need of the client cannot be adequately met by a less expensive alternative.

(b) Other support service payments are available to clients in the Pre-TANF program through the JOBS program (see OAR 461-190-0211 and 461-190-0241) in the same manner they are available to a TANF client.

(6) The Pre-TANF program is closed in any of the following circumstances:

(a) The client is unlikely to become employed within 45 days following the date of request, whether due to the employability of the client, the circumstances affecting the family, or other causes.

(b) The client fails without good cause (see OAR 461-130-0327) to comply with a requirement of an employment program or the case plan.

(c) In any circumstance that would make a client ineligible for TANF.

(d) Upon starting a JOBS Plus assignment.

(e) Upon employment and enrollment in the Post-TANF program.

(7) If Pre-TANF benefits are closed pursuant to subsection (6)(a) or (b) of this rule, TANF benefits may be opened if all TANF eligibility requirements are met.

Stat. Auth.: ORS 411.060, 411.070, 418.040, 418.100

Stats. Implemented: ORS 411.060, 411.070, 418.040, 418.100

Hist.: AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-135-0505

Categorical Eligibility for FS

(1) An individual is categorically eligible for food stamps if the individual:

(a) Receives or is authorized to receive GA or SSI benefits;

(b) Receives or is authorized to receive cash, in-kind benefits, or services funded either under Title IV-A of the Social Security Act or by the state as part of the TANF maintenance of effort;

(c) Is deemed to be receiving SSI under Section 1619(a) or 1619(b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)); or

(d) Is a member of a financial group (see OAR 461-110-0530) with countable (see OAR 461-001-0000) income less than 185 percent of the federal poverty level as described in OAR 461-155-0180(5) — and has received a pamphlet about Information and Referral Services.

(2) For an entire filing group to be categorically eligible for food stamps, it must contain only clients who are categorically eligible for food stamps. For the purpose of determining who is categorically eligible for food stamps, in the ERDC and TA-DVS programs all members of the filing group are considered receiving the benefits of the program even if not all members receive the benefit.

(3) A filing group that is eligible for transition services or the TA-DVS program is considered receiving benefits for the entire period of eligibility even if benefits are not received during each month of that period.

(4) An individual categorically eligible for the Food Stamp program is presumed to meet the eligibility requirements for resources and countable and adjusted income limits. The individual is also presumed to meet the requirements for a social security number, sponsored alien information, and residency, if verified in a public assistance program.

(5) When a filing group contains both members who are categorically eligible for food stamps and those who are not, a resource owned in whole or in part by a categorically eligible member is excluded.

(6) An individual may not be categorically eligible for food stamps in either of the following circumstances:

(a) The individual is disqualified from receiving food stamps because of an intentional program violation.

(b) The individual is a primary person (see OAR 461-001-0015) disqualified from receiving food stamps for failure to comply with an OFSET activity or component contained in an OFSET case plan (see OAR 461-001-0020).

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 29-2000(Temp), f. & cert. ef. 12-1-00 thru 3-31-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-135-0506

Transitional Benefit Alternative (TBA) in the Food Stamp Program

(1) This rule establishes the transitional benefit alternative (TBA). A client participating in TBA continues to receive food stamp benefits without reduction during the transition period. The transition period is five

months. If the filing group (see OAR 461-110-0370) separates into two groups during the TBA period, only the group containing the head of household continues in the TBA.

(2) Clients in the Food Stamp program who receive a cash grant in a program funded in whole or in part under Title IV-A of the Social Security Act may participate in TBA when the benefits are stopped, except as provided in section (4) of this rule.

(3) The benefit level for the transition period is based on countable income for FS during the last month before TBA begins, but the Title IV-A grant is not counted as income. Once it is established, the TBA benefit level is changed only when:

(a) The filing group submits a new application in the Food Stamp program and will receive more food stamps if they are not using the TBA reporting system;

(b) A member of the filing group leaves and applies for food stamps as a member of another household; or

(c) The Department initiates a change identified in OAR 461-170-0200.

(4) A household may not participate in TBA in each of the following situations:

(a) A member of the filing group is receiving benefits of the TANF program.

(b) The TANF benefits are stopped because the household does not reside in Oregon.

(c) The TANF benefits are stopped because of a change that results in ineligibility for TANF and the household failed to complete a timely report or to complete a required action on time.

(d) As of the date the TANF case closed, an individual in the household was serving a penalty imposed in the TANF program.

(e) The TANF benefits are stopped at the request of the household after the household is informed of an impending disqualification in the TANF program.

(f) The head of household becomes ineligible for the Food Stamp program because he or she lives in an institution or in a facility that provides at least 50 percent of the meals.

(g) A member of the financial group (see OAR 461-110-0530) is subject to a penalty in the Food Stamp program because of the individual's conduct, for instance, because the individual--

(A) Was excluded from the need group under OAR 461-110-0630(5);

(B) Was penalized for failure to meet a requirement of an employment program;

(C) Was ineligible for food stamps under OAR 461-105-0410; or

(D) Was ineligible for or disqualified from participation in the Food Stamp program because of a failure to comply with a requirement of the program to provide complete and accurate information to the Department.

(5) Once the TBA benefits have ended, a client's eligibility for the Food Stamp program is determined on the basis of a new application.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 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

461-135-1195

Specific Requirements; SFPSS Eligibility

(1) To be eligible for the SFPSS program, a client must meet the following requirements:

(a) The client must:

(A) Be an adult;

(B) Have an impairment that meets the requirements in OAR 461-125-0260;

(C) Meet all TANF program eligibility requirements (except as provided in section (4) of this rule); and

(D) Be receiving TANF benefits.

(b) Requirements regarding eligibility for Social Security disability benefits under the Social Security Act. The client must file an application for Supplemental Security Income (SSI) disability benefits under the Social Security Act.

(c) The client must sign an Interim Assistance Agreement authorizing the Department to recover interim SFPSS benefits paid to the client (or paid to providers on the client's behalf) from the initial SSI or SSDI payment or the initial payment after the decision on SSI eligibility. The following provisions are considered part of the Interim Assistance Agreement:

(A) Interim SFPSS benefits include only those SFPSS cash benefits paid to the adult, who is applying for SSI, during the period of time that the SSI or SSDI benefit covers.

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(B) For any month in which SSI is prorated, the Department may recover only a prorated amount of the interim SFPSS cash benefit.

(C) If the Department cannot stop delivery of a SFPSS benefit issued after the SSI payment is made, the SFPSS payment is included in the interim assistance to the reimbursement to the Department.

(2) When one adult in the filing group (see OAR 461-110-0330) is applying for SSI or SSDI, and the child or all children in the filing group are receiving an SSI grant, the family does not receive an SFPSS grant. The family remains on TANF (if eligible) and receives a TANF grant.

(3) A client whose impairment no longer meets the criteria in OAR 461-125-0260 is ineligible for SFPSS benefits.

(4) An SFPSS client found by the Social Security Administration (SSA) not to meet SSI or SSDI disability criteria may continue receiving SFPSS benefits until all administrative appeals are exhausted.

(5) Once a client is approved for SFPSS, the client is no longer subject to OAR 461-120-0340. The client remains exempt from OAR 461-120-0340 as long as the client is eligible for and receiving SFPSS.

Stat. Auth.: ORS 411.060, 418.100, 2007 OL 861

Stats. Implemented: ORS 411.060, 418.100, 2007 OL 861

Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-135-1250

Specific Requirements: Post-TANF Program

(1) This rule explains specific requirements for the Post-TANF program. The Post-TANF program provides \$150 per month per qualifying adult in aid for 12 consecutive months or until the household income exceeds 250 percent of the Federal Poverty Level (FPL), whichever comes first, as long as the client meets federally required JOBS participation rates in combined unsubsidized paid work and JOBS activities.

(2) To enroll in the Post-TANF program, a client must:

(a) Have obtained unsubsidized paid employment;

(b) Have become ineligible for the Pre-TANF, TANF or SFPSS programs due to earnings; and

(c) Be a Work Eligible Individual as defined by federal regulations.

(3) To remain eligible for the monthly Post-TANF payment, the client must meet the requirements of all of the following subsections:

(a) Meet all TANF eligibility requirements, except the client need not meet the following requirements:

(A) OAR 461-120-0310 and 461-120-0340 (child support assignment and cooperation);

(B) OAR 461-120-0330 (pursuing assets);

(C) OAR 461-125-0010 (deprivation);

(D) OAR 461-155-0030 (income limits); and

(E) OAR 461-160-0015 (resource limits).

(b) Report and meet the monthly JOBS federal participation requirements with unsubsidized paid work and, if necessary, other JOBS activities.

(c) Provide the Department with employer-produced documents of paid, unsubsidized work hours within 45 days after Pre-TANF, TANF, or SFPSS has ended.

(d) The client must also provide employer-produced documents of paid, unsubsidized work hours each time requested by the Department or no later than the last day of the sixth month following the date the client provides the verification of work hours in accordance with subsection (c) of this section.

(e) Report all changes in residency and household (see OAR 461-110-0210) group affecting Post-TANF eligibility within 10 days of the occurrence.

(f) Changes reported for another program that affect Post-TANF eligibility are considered reported for Post-TANF.

(4) Clients who fail to comply with subsection (3)(c) of this rule but then provide documents after 45 days will only be eligible for Post-TANF payments in the month the local Department office receives the documents and the months thereafter.

(5) Household income for the Post-TANF program is calculated in accordance with all TANF financial rules.

(6) Each parent (see OAR 461-001-0000) of a two-parent family is entitled to a monthly Post-TANF payment if both parents meet all Post-TANF enrollment and eligibility requirements.

(7) Monthly payments in the Post-TANF program begin the month after the last regular TANF benefit payment; or for Pre-TANF clients, the month after the Department verifies that the client meets TANF eligibility requirements.

(8) A client in the Post-TANF program is entitled to support services in accordance with OAR 461-190-0241. Additional support services may be granted with manager approval.

Stat. Auth.: ORS 411.060, 411.070, 418.155

Stats. Implemented: ORS 411.060, 411.070, 418.155

Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

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.

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

461-145-0410

Program Benefits

(1) EA and TA-DVS payments are treated as follows:

(a) In the ERDC and FS programs, a payment made directly to the client is counted as unearned income. Dual payee and provider-direct payments are excluded.

(b) In all programs except the ERDC and FS programs, these payments are excluded.

(2) Payments from ERDC and TANF child care are excluded unless the client is the provider.

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(3) Payments from the EXT, GAM, MAA, MAF, OHP, OSIP-IC, OSIPM, QMB, REFM, and SAC programs are excluded.

(4) Food Stamps payments are treated as follows:

(a) The value of an FS benefit is excluded in all programs except the EA program. In the EA program, the value is counted as a resource when determining the emergency food needs of the filing group (see OAR 461-110-0310).

(b) OFSET service payments are excluded.

(5) Benefits from the GA, OSIP (except OSIP-IC), Post-TANF, REF, SFPSS, TANF, and tribal-TANF programs (including the ten percent late processing fee discussed in OAR 461-165-0150) are treated as follows:

(a) In the EA program, these payments are counted as unearned income, except that these payments are excluded for a benefit group (see OAR 461-110-0750) whose emergent need is the result of domestic violence (see OAR 461-001-0000).

(b) In the ERDC program:

(A) Post-TANF payments are excluded.

(B) All other payments are counted as unearned income.

(c) In the FS program:

(A) These payments are treated as unearned income.

(B) An amount received as a late processing payment is treated as lump-sum income.

(C) Payments made to correct an underpayment are treated as lump-sum income.

(D) Ongoing special needs payments for laundry allowances, special diet or meal allowance, restaurant meals, accommodation allowances, and telephone allowances are treated as unearned income. All other special needs payments are excluded as reimbursements.

(d) In the OHP program:

(A) GA payments are excluded from income for purposes of determining OHP eligibility.

(B) Benefits from the Post-TANF program are excluded.

(C) Benefits from the OSIP (except OSIP-IC), REF, SFPSS, and TANF programs (including the ten percent late processing fee discussed in OAR 461-165-0150) are treated as follows:

(i) The payments are counted as unearned income if all the individuals included in the benefit group for the cash payment are also in the OHP financial group (see OAR 461-110-0530).

(ii) A prorated share is counted as unearned income if any of the individuals in the cash payment are not included in the OHP financial group. A prorated share is determined by dividing the total payment by the number of individuals in the TANF benefit group.

(iii) A payment made to correct an underpayment caused by the Department is excluded if the underpayment occurred prior to the budget period.

(e) In all programs except the EA, ERDC, FS, and OHP programs:

(A) These payments are excluded in the month received, and any portion remaining following the month of receipt is counted as a resource.

(B) Payments made to correct an underpayment are excluded.

(f) In all programs:

(A) JOBS, REF, and TANF JOBS Plus support service payments are excluded.

(B) For the treatment of JOBS Plus income, see OAR 461-145-0130.

(C) REF and TANF client incentive payments are treated as follows:

(i) Except in the TANF program, the cooperation incentive payment (see OAR 461-135-0310) is counted as unearned income.

(ii) Progress and outcome incentive payments other than in-kind payments are counted as lump-sum income (see OAR 461-140-0120). All other incentives are excluded.

(6) Pre-TANF program payments are treated as follows:

(a) In the FS program, a payment for basic living expenses, made directly to the client, is counted as unearned income. All other payments are excluded.

(b) In all programs except the FS program, these payments are excluded.

Stat. Auth.: ORS 411.060, 411.816, 414.042, 418.100, 2007 OL 861

Stats. Implemented: ORS 411.060, 411.700, 411.816, 414.042, 418.100, 2007 OL 861

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 5-1991, f. & cert. ef. 2-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 21-1992(Temp), f. 7-31-92, cert. ef. 8-1-92; AFS 32-1992, f. 10-30-92, cert. ef. 11-1-92; 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 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP

18-2005, f. 12-30-05, cert. ef. 1-1-06; 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

461-155-0150

Child Care Eligibility Standard, Payment Rates, and Copayments

The following provisions apply to child care in the ERDC, JOBS, JOBS Plus, and TANF programs:

(1) The following definitions apply to the rules governing child care rates:

(a) Infant: A child aged newborn to 1 year.

(b) Toddler: A child aged 1 year to 3 years.

(c) Preschool: A child aged 3 years to 6 years.

(d) School: A child aged 6 years or older.

(e) Special Needs: A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:

(A) A physician, nurse practitioner, licensed or certified psychologist or clinical social worker.

(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.

(C) Eligibility for SSI.

(2) The following definitions apply to the types of care specified in the child care rate charts:

(a) The Standard Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.

(b) The Enhanced Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider meets the training requirements of the Oregon Registry entry level, established by the Oregon Center for Career Development in Childhood Care and Education.

(c) The Registered Family Rate applies to child care provided in the provider's own home when the provider meets criteria established by the Child Care Division.

(d) The Certified Family Rate applies to child care provided in a residential dwelling that is certified by the Child Care Division as a Certified Family Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.

(e) The Standard Center Rate applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Child Care Division Certification rules (see OAR 414-300-0000).

(f) The Enhanced Center Rate applies to child care provided in an exempt center whose staff meet the training requirements of the Oregon Registry entry level established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:

(A) A minimum of one staff member for every 20 children in care must meet the Oregon Registry entry level training requirements noted in paragraph (2)(b) of this rule.

(B) New staff must meet the Oregon Registry entry level training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (A) of this subsection.

(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.

(g) An exempt center is eligible to receive the enhanced rate for a maximum of six months while in the process of meeting the requirements of subsection (2)(f) of this rule if it files a statement of intent to meet the requirements on a form prescribed by the Department.

(h) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of subsection (2)(b), (f), or (g) of this rule.

(i) The Certified Center Rate applies to child care provided in a center that is certified by the Child Care Division.

(3) Subject to the provisions in section (6) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:

(a) The monthly rate provided in section (6) of this rule.

(b) The product of the hours of care, limited by section (4) of this rule, multiplied by the hourly rate provided in section (6) of this rule.

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(4) The number of payable billable hours for a child is limited as follows:

(a) For the ERDC-BAS and TANF programs, the total in a month may not exceed:

(A) The number of hours of care necessary for the client to maintain his or her job including, for clients in the JOBS Plus program, the time the client searches for unsubsidized employment and for which the employer pays the client, or to participate in activities included in a case plan (see OAR 461-001-0025); or

(B) 125 percent of the time the client is at work or participating in an approved activity of the JOBS program.

(b) For the ERDC-SBG program, the total may not exceed the number of hours of care necessary for the client to maintain his or her education, training or employment. The total may not exceed 125 percent of the sum of 200 percent of class hours and the time the client is at work.

(c) In the ERDC-BAS and TANF programs, for a client who earns less than state minimum wage or is self-employed, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time). The limitation of this subsection is waived for the first three months of the client's employment.

(5) The following provisions apply to all programs:

(a) Providers not eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.

(b) Providers eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 136 hours a month unless the provider customarily bills all families at a part-time monthly rate subject to the maximum full-time monthly rate.

(c) At their request, providers eligible for the enhanced or licensed rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month and customarily bill all families at a part-time monthly rate.

(d) Unless required by the circumstances of the client or child, the Department will not pay for care at a monthly rate to more than one provider for the same child for the same month.

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.

(f) The Department will pay for up to five days each month the child is absent if:

(A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care;

(B) The absent child's place is not filled by another child; and

(C) It is the provider's policy to bill all families for absent days.

(g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.

(6) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (7) of this rule, is the lesser of the following:

(a) The amount billed by the provider or providers; and

(b) The monthly rate established in section (8) of this rule multiplied by a factor, not more than 1.5, determined by dividing the number of hours billed by 215.

(7) The limit allowed by section (6) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this rule, a client has special circumstances when it is necessary, in order for the client to perform the requirements of his or her employment or training, to obtain child care for a child in excess of 215 hours in a month.

(8) The payment available for care of a child who meets the special needs criteria described in subsection (1)(e) of this rule is increased in accordance with OAR 461-155-0151 if:

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age; and

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.

(9) The following are the child care rates. The rates are based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (that is, hourly or monthly).

(a) Group Area A: [Table not included. See ED. NOTE.]

(b) Group Area B: [Table not included. See ED. NOTE.]

(c) Group Area C: [Table not included. See ED. NOTE.]

(10) This section establishes the ERDC eligibility standard and the client's copayment (copay).

(a) The ERDC eligibility standard is met for need groups (see OAR 461-110-0630) of eight or less if monthly countable income (see OAR 461-001-0000) for the need group is less than 185 percent of the federal poverty level, as described in OAR 461-155-0180(4). The eligibility standard for a need group size of eight applies to any need group larger than eight.

(b) The minimum monthly ERDC copay is \$25.

(c) For filing groups (see OAR 461-110-0310) whose countable income is at or below 50 percent of the 2007 federal poverty level (FPL), the copay is \$25 or 1.5 percent of the filing group's monthly countable income, whichever is greater.

(d) For filing groups whose countable income is over 50 percent of the 2007 FPL, the copay amount is determined with the following percentage of monthly income:

(A) Determine filing group's countable income as a percent of FPL (rounding to the nearest whole number percentage), subtract 50, and multiply this difference by 0.12.

(B) Add 1.5 to the amount in paragraph (A) of this subsection. This sum is the percentage of monthly income to determine the copay amount.

(11) Effective October 1, 2003, a client's copay is \$25 during the first month the client is eligible for ERDC. This limitation cannot be used in more than one month in any 12 consecutive months.

(12) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National Guard unit that is called up for active duty is the lesser of the following:

(a) The amount billed by the provider or providers.

(b) The monthly rate established in this rule for 215 hours of care.

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

Stat. Auth.: ORS 411.060, 411.070, 418.100

Stats. Implemented: ORS 411.060, 411.070, 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 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 14-1992, f. & cert. ef. 6-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1994, f. 4-29-94, cert. ef. 5-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 4-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 4-2000(Temp), f. 2-29-00, cert. ef. 3-1-00 thru 8-25-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 2-2003(Temp); f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 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

461-155-0320

Payment Standard; SFPSS

The following payment standards apply in the SFPSS program:

(1) When one adult in the filing group (see OAR 461-110-0330) is applying for SSI or SSDI: [Table not included. See ED. NOTE.]

(2) When two or more adults in the filing group are applying for SSI/SSDI: [Table not included. See ED. NOTE.]

(3) The standard for eleven individuals or more in the need group is the sum of the payment for ten individuals in the need group, plus \$109 for each additional individual in the need group, plus the cooperation incentive for ten individuals in the need group.

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

Stat. Auth.: ORS 411.060, 418.100, 2007 OL ch. 861

Stats. Implemented: ORS 411.060, 418.100, 2007 OL ch. 861

Hist.: SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-155-0670

Special Need; Special Diet Allowance

(1) In the EXT, GA, GAM, MAA, MAF, OSIP, OSIPM, REF, REFM, SAC, SFPSS, and TANF programs, clients are not eligible for a special diet allowance if they are receiving any of the following:

(a) Room and board.

(b) Residential care facility (RCF) services or assisted living facility (ALF) care.

(c) Long-term care.

(d) Adult foster care (AFC) services.

(e) An allowance for restaurant meals.

ADMINISTRATIVE RULES

(f) A commercial food preparation diet.

(2) EXT, GA, GAM, MAA, MAF, REF, REFM, SAC, SFPSS, and TANF clients, and OSIP and OSIPM clients receiving SSI or long-term care services in the community, are eligible for a special diet allowance if they meet the following requirements:

(a) They would be in an imminent life-threatening situation without the diet, as verified by medical documentation from a Department-approved medical authority (see OAR 461-125-0830); and

(b) A nutritionist verifies that the special diet needed exceeds the cost of a regular diet.

(3) The amount of a special diet allowance is calculated as follows:

(a) In the EXT, MAA, MAF, REF, REFM, SAC, SFPSS, and TANF programs, the difference between the actual cost of the special diet and a prorated share of the FS benefit for the appropriate number of clients in the benefit group (see OAR 461-110-0750).

(b) In the GA, GAM, OSIP, and OSIPM programs, the lesser of the following:

(A) The difference between the actual cost of the special diet and the amount provided in the basic standard for food (see OAR 461-155-0250).

(B) A maximum of \$300 per month, or an exceptional amount, authorized by the SPD Program Assistance Section, which will not exceed the cost of home IV therapy.

(4) Local management staff must approve the request for a special diet allowance.

(5) Each special diet allowance must be reviewed at six-month intervals.

Stat. Auth.: ORS 411.060, 411.070, 418.100, 2007 OL 861

Stats. Implemented: ORS 411.060, 411.070, 418.100, 2007 OL 861

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-160-0430

Income Deductions; FS

(1) Deductions from income are subtracted from countable income (see OAR 461-140-0010) in the following order to determine adjusted income (see OAR 461-001-0000) for the Food Stamp program:

(a) An earned income deduction of 20 percent of countable earned income. The 20 percent deduction is not taken from the wages funded by grant diversions such as Work Supplementation wages.

(b) A standard deduction of \$134 per month for a benefit group (see OAR 461-110-0750) of one, two, or three persons. A standard deduction of \$143 for a benefit group of four persons. A standard deduction of \$167 for a benefit group of five persons. A standard deduction of \$191 for a benefit group of six or more persons.

(c) A dependent care deduction not to exceed \$175 each month for each dependent, or \$200 each month for each child under age 2, for dependent care costs billed to a member of the financial group (see OAR 461-110-0530) and not paid for through any other program of the Department. For the cost to be deductible under this section, the care must be necessary to enable a member of the need group (see OAR 461-110-0630) to:

(A) Accept or continue employment;

(B) Meet the requirements of a case plan (see OAR 461-001-0020);

or

(C) Attend vocational or educational training. A student receiving educational income is entitled to a deduction only for costs not excluded from educational income by OAR 461-145-0150.

(d) The medical deduction for elderly clients and clients who have a disability (see OAR 461-001-0015) in the need group. The deduction is calculated by determining the total of their deductible medical costs (see OAR 461-160-0415) and subtracting \$35. The remainder is the medical deduction.

(e) A deduction for child support payments (including cash medical support) a member of the household makes under a legal obligation to a child not a member of the household group (see OAR 461-110-0210), including payments for the current month and for payments on arrearages. Child support is not deductible if collected by setoff through the Oregon Department of Revenue or by interception of a federal tax refund.

(f) A shelter deduction, calculated as follows:

(A) For FS clients required to pay room and board in a nonstandard living arrangement (see OAR 461-001-0000), the shelter deduction is:

(i) The cost of room and board, minus the payment standard for the benefit group; or

(ii) The actual room cost, if the client can prove that the room cost exceeds the cost described in subparagraph (i) of this paragraph.

(B) For all other clients, the shelter deduction is calculated as follows:

(i) The standard deduction and the deductions of earned income, dependent care, court-ordered child support, and medical expenses are subtracted from countable income. Fifty percent of the remainder is subtracted from the shelter cost calculated in accordance with OAR 461-160-0420.

(ii) The rounded balance is the deduction, except the deduction is limited if the filing group has no member who has a disability or is elderly (see OAR 461-001-0015). The limit is \$431.

(2) If the client cannot verify a medical or court-ordered child-support expense or cannot verify any other expense when asked to do so, the unverified expense is not used to calculate the deduction. If the client provides verification, the deduction is applied when calculating the next month's benefits. If verification is provided within the period authorized for processing applications (see OAR 461-115-0210), the benefits for the initial month (see OAR 461-001-0000) are recalculated using the deduction.

Stat. Auth.: ORS 411.816

Stat. Implemented: ORS 411.816 & 411.825

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1995(Temp), f. 10-30-95, cert. ef. 11-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 41-1996(Temp), f. & cert. ef. 12-31-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 23-2000(Temp) Suspended by AFS 28-2000(Temp), f. 10-31-00, cert. ef. 11-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 3-2001, f. 2-27-01, cert. ef. 3-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-165-0030

Concurrent and Duplicate Program Benefits

(1) An individual may not receive benefits from the Department of the same type (that is, cash, medical, or food stamp benefits) for the same month as a member of two or more different benefit groups (see OAR 461-110-0750) or from two or more separate programs, except as noted in this rule. This provision includes a prohibition against an individual receiving TANF concurrently with another cash assistance program funded under Title IV-E of the Social Security Act.

(a) A client may receive EA, HSP, and TA-DVS benefits and cash payments from other programs for the same time period.

(b) If a GA client becomes eligible for the TANF program, the client's benefits are supplemented during the first month of eligibility for TANF to the TANF payment standards.

(c) An REF or TANF recipient may receive ERDC for children who are in the household group (see OAR 461-110-0210) but may not be included in the REF or TANF filing group.

(d) A child (see OAR 461-001-0000) who is a member of an ERDC benefit group may also be a member of one of the following benefit groups:

(A) An OSIP-AB benefit group.

(B) A TANF benefit group when living with a nonneedy caretaker relative (see OAR 461-001-0000), if the caretaker relative is not the child's parent.

(C) A TANF benefit group when living with a needy caretaker relative receiving SSI.

(e) Clients in the FS program who leave a filing group that includes an individual who abused them and enter a domestic violence shelter (see OAR 461-001-0000) or safe homes (see OAR 461-001-0000) for victims of domestic violence (see OAR 461-001-0000) may receive food stamp benefits twice during the month they enter the domestic violence shelter or safe home.

(f) A QMB client may also receive medical benefits from EXT, MAA, MAF, OSIPM, REFM, or SAC.

(2) An individual may not receive benefits of the same type (that is, cash, medical, or food stamp benefits) for the same period from both Oregon and another state or tribal food distribution program, except as follows:

(a) Medical benefits may be authorized for an eligible client if the client's provider refuses to submit a bill to the Medicaid agency of another state and the client would not otherwise receive medical care.

(b) Cash benefits may be authorized for a client in the Pre-TANF program if benefits from another state will end by the last day of the month in which the client applied for TANF.

ADMINISTRATIVE RULES

(3) In the FS program, each individual who has been included as a member of the filing group in Oregon or another state is subject to all of the restrictions in section (2) of this rule.

(4) An individual may not receive benefits from the EXT, MAA, MAF, OHP, OSIPM, REFM, or SAC programs while receiving a subsidy through the Family Health Insurance Assistance Program (FHIAP) established by ORS 735.720 to 735.740.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 418.100
Stats. Implemented: ORS 411.060, 411.070, 411.117, 411.816, 414.042, 418.100, 2007 OL 861
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 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 14-1999, f. & cert. ef. 11-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; 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

461-170-0020

Changes That Must be Reported; FS, MAA, MAF, REF, REFM, SAC, SFPSS, TANF

(1) Clients in the FS, MAA, MAF, REF, SAC, SFPSS, and TANF programs are required to report all applicable changes described in this rule.

(2) Clients must report each of the following changes within ten days of occurrence, unless the client is required to report the change by section (7) or (8) of this rule or is exempted from the reporting requirement by section (9) of this rule:

(a) A change in employment, including getting, changing, quitting, or losing a job.

(b) A change in source of income.

(c) A change in earned income of more than \$100 a month, except a change due to an annual adjustment in the Oregon minimum wage.

(d) A change in unearned income of more than \$50, except a change in a public assistance grant.

(3) Clients must report each of the following changes within ten days of occurrence, unless the client is required to report the change by section (8) of this rule or is exempted from the reporting requirement by section (9) of this rule:

(a) The acquisition or change in ownership of non-excluded vehicles.

(b) The sale or receipt of resources that cause total resources to exceed program resource limits.

(4) In the MAA, MAF, REF, REFM, SAC, SFPSS, and TANF programs, clients must report a member of the filing group becoming pregnant and when the pregnancy ends.

(a) The report of pregnancy must be received by the Department no later than the tenth day after the client becomes aware of the pregnancy.

(b) The report of pregnancy ending must be received by the Department no later than the tenth day after the client becomes aware of the pregnancy ending.

(5) In the MAA, MAF, REF, REFM, SAC, SFPSS, and TANF programs, clients must report each of the following changes within ten days of occurrence:

(a) A change in the members of the household group (see OAR 461-110-0210) and any resulting change in income.

(b) A change in residence.

(c) A change in who pays the shelter costs if the costs were or will be paid by a non-custodial parent.

(6) In the FS program, clients must report each of the following changes within ten days of occurrence, unless the client is required to report the change by section (8) of this rule or is exempted from the reporting requirement by section (9) of this rule:

(a) A change in residence and the shelter costs in the new residence.

(b) A change in members of the filing group (see OAR 461-110-0370) and any resulting change in income.

(c) A change in the legal obligation to pay child support.

(7) Clients in the monthly reporting system (MRS) must report changes in income as required by the rules applicable to the Monthly Change Report.

(8) In the FS program, clients in the simplified reporting system (SRS) must report:

(a) By the tenth day of the month following the month of occurrence, when any of the following paragraphs applies:

(A) Monthly income exceeds the countable income limit in the FS program.

(B) Monthly income exceeds 185 percent of the federal poverty level.

The requirement of this paragraph only applies to households in which all members are elderly or have a disability (see OAR 461-001-0015), there is

no earned income (see OAR 461-145-0120), and income at certification exceeded the countable income limit (see OAR 461-155-0190).

(C) Their mailing address changes.

(b) On the interim change report, all other changes not covered by subsection (8)(a) of this rule.

(9) In the FS program, clients participating in the transitional benefit alternative (TBA) are not required to report changes.

Stat. Auth.: ORS 411.060, 411.816, 414.042, 418.100, 2007 OL 861

Stats. Implemented: ORS 411.060, 411.105, 411.816, 414.042, 418.100, 2007 OL 861
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SPP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-170-0030

Changes That Must be Reported; Not ERDC, EXT, FS, MAA, MAF, OHP, SAC, SFPSS, TANF

(1) In the GA, GAM, OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB programs, clients are required to report within 10 days all changes in income, resources, and circumstances that may affect their eligibility for benefits or the amount of benefits they receive.

(2) In the OSIP-EPD and OSIPM-EPD programs, clients must report the following changes within 10 days:

(a) A change in employment, including obtaining, quitting or losing a job.

(b) A change in source of income.

(c) A change in earned income based on hourly wages when the change is due to:

(A) A change in rate of pay; or

(B) A change greater than five in the number of hours worked each week when the change is expected to last one month or longer.

(d) A change in earned income not based on hourly wages of more than \$100 a month.

(e) A change in unearned income, except a change in a public assistance grant, of more than \$25.

(f) A change in residence.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.105

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-180-0010

Effective Dates; Adding a New Person to an Open Case

(1) In the following programs, the effective date for adding an individual (other than an assumed eligible newborn) to the benefit group (see OAR 461-110-0750) is one of the following:

(a) In the EXT, GAM, MAA, MAF, OHP, OSIPM, REFM, and SAC programs, it is whichever occurs first:

(A) The date the client requests benefits, if he or she was eligible as of that date.

(B) The date all eligibility requirements are met.

(b) In the Food Stamp program:

(A) If adding the individual increases benefits, it is the first of the month after the filing group (see OAR 461-110-0370) reports the person has joined the household group (see OAR 461-110-0210). If verification is requested, the effective date for the change is:

(i) The first of the month following the date the change was reported if verification is received by the Department no later than the due date for the verification.

(ii) The first of the month following the date the verification is received by the Department, if received after the verification due date.

(B) If adding the individual reduces benefits, it is the first of the month following the month in which the notice period ends (see OAR 461-175-0050).

(c) In the GA, OSIP, REF, SFPSS, and TANF programs, it is the date on which all eligibility requirements are met and verified. If benefits have been issued for the month and adding the new person would reduce benefits, the person is added the first of the month following the month in which the notice period ends (see OAR 461-175-0050).

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(d) In the QMB-BAS and QMB-DW programs, it is the first of the month after the new individual has been determined to meet all QMB eligibility criteria and the Department receives the required verification.

(e) In the QMB-SMB program, it is the first of the month in which the new individual has been determined to meet all QMB-SMB eligibility criteria and the Department receives the required verification.

(f) In the SFPSS and TANF programs, for adding a child to be covered by a provider-direct child care payment, it is the first of the month in which the child is added to the benefit group.

(2) In the following programs, the effective date for adding an assumed eligible newborn to the benefit group is one of the following:

(a) In the EXT, GAM, MAA, MAF, OHP, OSIPM, REFM, and SAC programs, it is the date of birth if all the following paragraphs are true. If any of the following paragraphs is not true, the newborn is added to the benefit group in accordance with section (1) of this rule.

(A) A request for benefits is made within one year of the birth. For purposes of this paragraph, a telephone call from the attending physician, another licensed practitioner, a hospital, or the family is considered a request for benefits.

(B) The newborn has continuously lived with the mother since the date of birth.

(C) The mother was receiving EXT, GAM, MAA, MAF, OHP, OSIPM, or SAC on the date of birth, even if she is not currently eligible for benefits.

(b) In the SFPSS and TANF programs, it is:

(A) The date of birth, if all eligibility requirements are met and verified within 45 days after the birth; or

(B) The date all eligibility factors are met and verified, if the verification is completed more than 45 days after the date of birth.

(3) In the ERDC program, the effective date for adding an individual to the need group (see OAR 461-110-0630) or benefit group is as follows:

(a) If adding the individual to the need group will decrease the copay, the effective date is the first of the month after the client reports the person has joined the household.

(b) If adding the individual to the need group increases the copay — for instance, because the individual receives income — the effective date is the first of the month following the end of the decision notice period (see OAR 461-175-0050).

(c) The effective date for adding a child to the benefit group — that is, covering the cost of the child's care — is the earliest of the following:

(A) For newborns, the date of birth, if all eligibility requirements are met and verified within 45 days after the birth.

(B) For all other children, the first of the month in which the change is reported, if all eligibility requirements are met and verified within 45 days.

(C) For newborns and other children, if eligibility cannot be verified within 45 days, the effective date is the first of the month in which all eligibility factors are met and verified.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 418.100, 2007 OL 861
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 418.100, 2007 OL 861
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-180-0020

Effective Dates; Changes in Income or Deductions that Cause Increases

For all programs in Chapter 461, except for cases using APR (see OAR 461-170-0150), this rule is used to determine the effective date when a change in income or income deductions causes an increase in benefits.

(1) For a change reported through the MRS (see OAR 461-170-0100), the effective date is the first of the payment month.

(2) For a change not reported through the MRS, the effective date is one of the following:

(a) In the EXT, GA, MAA, MAF, SAC, SFPSS, and TANF programs, the effective date for an anticipated change reported before the payment month is the first of the payment month in which it will occur. If the change is not reported until the month it occurs or later, the effective date is the first of the month following the month in which the change was reported.

(b) In the FS program:

(A) The effective date when verification is not requested is the first of the month following the date the change was reported.

(B) The effective date if verification is requested is:

(i) The first of the month following the date the change was reported if verification is received no later than the due date for the verification.

(ii) The first of the month following the date the verification is received by the Department, if received after the verification due date.

(c) In the OSIP program, the effective date for an anticipated change is:

(A) The first of the month in which the change occurs if the change is reported by the 10th day of the month following the month the change occurred; or

(B) 10 days before the change is reported, if it is reported after the 10th day of the month following the month the change occurred.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 418.100, 2007 OL 861
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 418.100, 2007 OL 861
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-180-0070

Effective Dates; Initial Month Cash Benefits

(1) In the EA program, the effective date for opening the case is the day benefits are issued to the benefit group (see OAR 461-110-0750). For benefit groups whose only eligible child is an unborn, the effective date cannot be earlier than the first day of the calendar month preceding the month in which the due date falls.

(2) In the ERDC-BAS and ERDC-SBG programs, the effective date for starting benefits is one of the following:

(a) The first day of the month in which the request for benefits is made, as long as:

(A) All eligibility requirements are met in that month; and

(B) Verification is provided within the application processing timeframes.

(b) If all eligibility requirements are not met in the month of request, the effective date is the first day of the month in which they are met, if verification is provided within the application processing timeframes.

(c) For benefit groups that received TANF within the 30 days before applying for ERDC, the effective date is the first of the month following closure of their TANF benefits.

(3) In the GA program, the effective date for the initial month of cash benefits is whichever of the following occurs first:

(a) The day all eligibility requirements are met and verified.

(b) The 45th day from the date the client requests benefits, if all eligibility requirements were met, but the Department did not receive documentation until after the 45th day.

(4) In the OSIP program, the effective date for the initial month of cash benefits is whichever of the following occurs first:

(a) The date the client requests benefits, if he or she was eligible as of that date.

(b) The date all eligibility requirements are met.

(5) In the REF and TANF programs, the effective date for the initial month of cash benefits is as follows:

(a) For a client in the Pre-TANF program, it is the later of the following:

(A) The day the Pre-TANF program ends.

(B) The 30th day following the date the client requests benefits, if the Department does not receive required verification until after the 30th day.

(b) For a client not in the Pre-TANF program (see OAR 461-135-0475), it is the day the client meets and verifies all eligibility requirements.

(c) In the TANF program, if the only eligible child is an unborn, it may not be earlier than the first day of the calendar month preceding the month in which the due date falls.

(d) For a provider-direct child care payment (see OAR 461-165-0190), it is the first of the month in which TANF benefits begin.

(e) For a JOBS support service payment, it is the date the client meets all eligibility requirements in OAR 461-190-0211.

(6) For TANF recipients moving to the SFPSS program, the effective date for the initial month of SFPSS benefits is:

(a) Except as provided in subsection (b) of this section, the first of the month following the day all eligibility requirements are met and verified.

(b) If the day all eligibility requirements are met and verified falls after the compute deadline, the initial month of SFPSS benefits will be the first of the month following the month after compute deadline. For purposes of this rule, the "compute deadline" means the Department computer system monthly deadline after which changes will not take effect until the month following the first of the next month.

Stat. Auth.: ORS 411.060, 411.070, 418.100, 2007 OL 861

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Stats. Implemented: ORS 411.060, 411.070, 418.100, 2007 OL 861
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; 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

461-180-0081

Effective Dates; Cases Receiving Transitional Benefit Alternative (TBA)

(1) The effective date for starting TBA benefits is the first day of the month after the TBA notice is mailed. The effective date cannot precede the date the Department has determined the client is no longer eligible for TANF.

(2) Once a household begins to receive TBA benefits, the benefits are not changed until the end of the TBA period except that TBA benefits will be changed appropriately if a member of the household:

(a) Leaves the household and applies for food stamps as a member of another household; or

(b) Becomes ineligible for TBA per OAR 461-135-0506.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-190-0151

Case Planning; JOBS, Pre-TANF, REF, SFPSS, TA-DVS

In the JOBS, Pre-TANF, REF, SFPSS, and TA-DVS programs:

(1) The Department and client develop an individualized case plan that is agreed to by the client and the Department.

(a) The Department uses proven methods for encouraging the full engagement of clients and the development of the case plan. These proven methods include, but are not limited to, strength-based case management and motivational interviewing.

(b) The case plan may be modified whenever circumstances change.

(2) The case plan:

(a) Is individualized and developed with the client and in cooperation with appropriate partner agencies or other professionals.

(b) Identifies client goals and activities (see OAR 461-001-0025) that will help the client meet those goals.

(A) Activities are based on information obtained in screenings and evaluations, and are intended to build on client strengths.

(B) Activities promote both family stability and financial independence.

(C) Activities help reduce or eliminate barriers to self-sufficiency, employment, job retention, wage enhancement, and full participation in the JOBS program.

(D) For a client who has a disability (see OAR 461-001-0000), the goal of the case plan is to promote greater independence. The case plan may include physical and mental health treatment.

(E) The case plan includes agreed upon support services (see OAR 461-001-0025) needed to enable the client to successfully complete the case plan.

(F) The case plan includes identified accommodations or modifications necessary for the client to successfully complete the case plan.

(3) In the JOBS program, the case plan (see OAR 461-001-0025):

(a) Is complete and binding for all core activities (see OAR 461-001-0025) and all non-core activities (see OAR 461-001-0025) once it is signed by a representative of the Department, the client is informed of its contents, and the client has been offered a copy of the plan.

(b) Is complete and binding for all non-countable activities when it is signed by a representative of the Department and the client, and the client has been offered a copy of the plan.

(4) The client must inform the Department of any circumstances that may require a change to the provisions of the case plan.

(5) A client who disagrees with a requirement to comply with any provision of a case plan may seek resolution of the disagreement through the re-engagement process described in OAR 461-190-0231.

Stat. Auth.: ORS 411.060, 418.045, 418.100

Stats. Implemented: ORS 411.060, 418.045, 418.100

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; 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

461-190-0163

Restrictions on On-the-Job Training, Unpaid Employment, Work Supplementation; JOBS

(1) The Department may not require a client to participate in an activity (see OAR 461-001-0025) of the OJT (see OAR 461-001-0025), *unpaid employment* (see OAR 461-001-0025), or *work supplementation components* (see OAR 461-001-0025) in the following circumstances:

(a) The client would displace a currently employed worker or position or would cause a reduction in regularly scheduled hours, wages or benefits of a current employee.

(b) The assignment would impair an existing contract for services or a collective bargaining agreement.

(c) The employment or assignment occurs at the same time another person is laid off from the same or an equivalent job within the same organizational unit or an employer terminates an employee or reduces its work force by hiring a participant in OJT, unpaid employment, or work supplementation.

(d) The employment or assignment infringes in any way on promotional opportunities of a current employee.

(2) The Department may not require a client to participate in the work supplementation component by filling an established but currently vacant position.

(3) The working conditions for clients participating in the OJT, unpaid employment, and work supplementation components may not violate applicable state and federal health and safety standards or require activities not considered usual and customary in the occupation for which the participant is being trained.

(4) Clients participating in the OJT, unpaid employment, and work supplementation components who are covered by a workers' compensation system are entitled to the same level of benefits under the same conditions as other individuals similarly employed.

(5) Clients in work supplementation not covered by an applicable workers' compensation statute must be provided with equal medical and accident protection for on-site injuries as that required by the state's worker compensation statute for covered employment.

(6) Clients in unpaid employment are covered by the Fair Labor Standards Act (FLSA) (see OAR 461-001-0025) if the worksite is a FLSA subject employer.

Stat. Auth.: ORS 411.060, 418.040, 418.045, 418.100

Stats. Implemented: ORS 411.060, 418.040, 418.045, 418.100

Hist.: AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 18-1998, f. & cert. ef. 10-2-98; 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

461-190-0171

Education Requirements for Teen Parents; JOBS

(1) Except as provided in section (2) of this rule, a teen parent (see OAR 461-001-0025) who participates in the JOBS program and does not have a high school diploma or GED must participate in the *basic education component* (see OAR 461-001-0025).

(2) A *teen parent* is excused from the requirements of section (1) of this rule if any of the following subsections apply:

(a) He or she is exempt (see OAR 461-130-0310) from the requirement to participate in the JOBS program 16 weeks after the birth of a child, except that the teen parent may be required to participate in suitable activities with a preference for educational activities, parenting classes, and family stability activities (see OAR 461-001-0000).

(b) He or she is under age 18, has been excused by the local school district from state compulsory school attendance, and meets the following conditions:

(A) The employment goal of the teen parent is an occupation or occupational field that does not require a high school diploma or GED, there is a labor market demand for it, and the goal is appropriate for the client and likely to lead to self-sufficiency; and

(B) The teen parent is participating in the job skills training component (see OAR 461-001-0025) and an education component (see OAR 461-001-0025) designed to result in a literacy level of at least grade 8.9.

(c) He or she is age 18 or 19 and can be assigned to employment training to prepare for occupations or occupational fields for which there is a labor market demand, and either he or she has failed to achieve good or satisfactory progress (see OAR 461-001-0025) in completing his or her educational activities (see OAR 461-001-0025) or educational activities are inappropriate for his or her education and employment goals.

Stat. Auth.: ORS 411.060, 411.070, 418.040, 418.045, 418.100

Stats. Implemented: ORS 411.060, 411.070, 418.040, 418.045, 418.100

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 18-1998, f. & cert. ef.

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10-2-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; 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

461-190-0211

Standards for Support Service Payments

(1) The Department helps an individual comply with the individual's case plan (see OAR 461-001-0025) by providing payments for child care, housing, transportation, and other needs to make participation in required activities (see OAR 461-001-0025) successful. These payments are provided for costs directly related to participation in activities, for costs necessary to obtain and retain a job, and for enhancing wages and benefits. In approving JOBS support service payments, the Department must consider lower-cost alternatives. It is not the intent of the Department or of this rule to supplant Department funding with other funding that is available in the community. It is the Department's expectation that case managers and clients will work collaboratively to seek resources that are reasonably available to the client in order to participate in activities.

(2) Support service payments must be authorized in advance and are subject to the limitations of this rule. The following standards apply to support service payments.

(3) Subject to the limitations of state funding, payments for support services (see OAR 461-001-0025) will be made available to an individual if all of the following requirements are met:

(a) The individual is one of the following:

(A) A TANF applicant or recipient.

(B) A client in the Pre-TANF, Post-TANF, or SFPSS programs.

(C) A minor parent (see OAR 461-001-0000) who has returned to the minor's parent's home in the last 40 days, if the move caused the client to become ineligible for TANF.

(D) A TANF client participating in diagnosis, counseling, or treatment programs for substance abuse or mental health.

(E) A non-citizen who is ineligible for TANF, who is legally able to work in the United States, and who has a child receiving TANF.

(F) An individual disqualified from the TANF program for failure to comply with the child-support related requirements of OAR 461-120-0340 and 461-120-0345.

(G) An individual eligible for transition benefits and services under OAR 461-190-0241.

(H) An individual currently receiving TA-DVS benefits.

(I) A non-custodial parent of a child receiving TANF benefits, if both are residents of Oregon.

(J) A recipient of supplemental security income (SSI) who is a volunteer (see OAR 461-130-0310) in an employment program.

(K) A caretaker relative (see OAR 461-001-0000) who is non-needy and is a volunteer in an employment program.

(b) The individual has agreed to participate in a JOBS activity or other approved activities as specified in the individual's case plan.

(4) For an individual who is eligible for a support service under paragraphs (3)(a)(J) and (3)(a)(K) of this rule, the Department will consider that individual's income and resources towards the need.

(5) Denials and Reductions. The Department may reduce, close, or deny in whole or in part an individual's request for a support service payment in the following circumstances:

(a) If the individual is disqualified for failing to comply with a case plan, unless the payment in question is necessary for the client to comply with his or her case plan.

(b) If the purpose for the payment is not related to the individual's case plan.

(c) If the client disagrees with a support service payment offered or made by the Department as outlined in the client's case plan.

(6) Required Verification.

(a) The Department may require the individual to provide verification of a need for the support service prior to approval and issuance of payment if verification is reasonably available.

(b) The Department may require the individual to provide verification of costs associated with a support service if verification is reasonably available.

(7) Child Care. Payments for child care are authorized, as limited by OAR 461-160-0040, if necessary to enable the individual to participate in JOBS program activities or other approved activities specified in the individual's case plan. If authorized, payment for child care will be made for:

(a) The lesser of the actual rate charged by the care provider and the rate established in OAR 461-155-0150. The Department rate for children in care less than 158 hours in a month is limited by OAR 461-155-0150, except that the cost of child care may be paid up to the monthly maximum when children are in care less than 158 hours per month and:

(A) Appropriate care is not accessible to the individual at the hourly rate; or

(B) The individual is a teen parent using on-site care while attending education activities.

(b) The minimum hours necessary, including meal and commute time, for the individual to participate in JOBS or other approved activities or to obtain and maintain employment.

(8) Child care payments may be provided when individuals are not participating in activities of the JOBS program or other approved activities if necessary for them to retain their provider. Only the minimum amount necessary to maintain the child care slot with the provider may be covered as established in OAR 461-155-0150. Not more than 30 days between scheduled JOBS or other approved activities may be covered.

(9) Housing and Utilities. In addition to payments for basic living expenses provided in OAR 461-135-0475, payments may be provided to secure or maintain housing and utilities in the following situations:

(a) To prevent an eviction or utility shut-off, secure housing in order to find or maintain employment, or participate in activities listed in the individual's case plan. Payment is available when all the following are true:

(A) The individual cannot make a shelter or utility payment due to lack of assets.

(B) The lack of assets did not result from a JOBS or Child Support disqualification, a reduction due to an IPV recovery, overpayment recovery (other than administrative error), or failure by the individual to pay shelter or utility expenses when funds were reasonably available.

(C) The individual's case plan addresses how subsequent shelter or utility payments will be made.

(b) The shelter need results from domestic violence (see OAR 461-001-0000) and all the following are true:

(A) The individual is not eligible for the TA-DVS program.

(B) The individual will be able to pay all subsequent shelter costs, either through the individual's own resources or through other resources available in the community.

(C) The individual's case plan addresses how subsequent shelter costs will be paid.

(c) For clients who are in the Pre-TANF program or are applying for a payment under section (6) of this rule, the Department will make payments if the client meets the eligibility criteria in section (9) of this rule. A client who receives a TANF grant is expected to meet the housing and utility expenses out of the money received each month in the TANF grant. Therefore, for clients who receive a TANF grant, the Department may make payments on a case-by-case basis as appropriate if the client otherwise meets the support service payment eligibility criteria of this section.

(10) Transportation. The Department will provide payments for transportation costs incurred in travel to and from JOBS or other approved activities. Payment is made only for the cost of public transportation or the cost of vehicle insurance, repairs, and fuel for a personally owned vehicle. The Department will not authorize payment for repair of a vehicle owned by an individual who is not in the TANF filing group (see OAR 461-110-0330). Payments are subject to the following considerations:

(a) Payments for public transportation are given priority over payments for a privately owned vehicle.

(b) Payment for a privately owned vehicle is provided if the client or driver has a valid license and either of the following is true:

(A) No public transportation is available or the client is unable to use public transportation because of a verifiable medical condition or disability for which no accommodation is available.

(B) Public transportation is available but is more costly than the cost of car repair or fuel.

(11) Other Payments. The Department will provide payments for other items that are directly related to participation in JOBS or other approved activities. Payments under this section may be authorized for:

(a) Reasonable accommodation of a client's disability (see OAR 461-001-0000).

(b) Costs necessary in obtaining and retaining a job or enhancing wages and benefits, such as:

(A) Clothing and grooming for participation in JOBS activities or job interviews.

(B) Moving expenses necessary to accept employment elsewhere.

(C) Books and supplies for education needs.

(D) Tools, bonding, and licensing required to accept or retain employment.

(c) Tuition for vocational training (see OAR 461-001-0025) only:

(A) After the client has been approved for vocational training;

(B) When no other funding is available;

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(C) To the extent that Department funding designated for this purpose is available; and

(D) When the training is necessary for a job leading to a higher wage and high demand occupation, as defined by the Workforce Investment Act (WIA).

(12) Students Receiving Financial Aid. Authorization for payments for students in vocational training who receive financial aid is subject to the following conditions:

(a) A student whose financial aid consists solely of student loans is not required to use any of that financial aid for support services.

(b) Support service payments are not authorized for services specifically covered by federal or state financial aid other than student loans.

(c) Students whose financial aid consists of a combination of loans and grants may be required to pay for support services from any grant money remaining after payment of tuition, fees solely related to the institution where the individual attends, books, and supplies (applying first the loan and then any grants) if the financial aid award letter specifically permits this use of funds.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 418.100, 418.155, 2007 OL 861

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 11-2005(Temp), f. & cert. ef. 9-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-190-0231

Re-engagement; JOBS, Pre-TANF, REF, SFPSS, TA-DVS

In the JOBS, Pre-TANF, REF, SFPSS, and TA-DVS programs:

(1) When aspects of the case plan have not been met or are in dispute, the re-engagement process provides an opportunity for the client and the Department to:

(a) Review and re-evaluate the case plan and other information gathered related to the client's strengths and barriers;

(b) Identify participation expectations, concerns related to participation, and completion of activities in the case plan;

(c) Consider whether the case plan is still appropriate;

(d) Develop options that support full participation; and

(e) Revise the case plan if appropriate.

(2) The re-engagement process is intended to assist the Department in identifying whether the client is unable to fully participate or whether the client is or has been willfully non-complaint.

(a) In the JOBS, Pre-TANF, REF, and SFPSS programs, if screenings for physical or mental health needs, substance abuse, domestic violence (see OAR 461-001-0000), or learning needs have not been completed, the re-engagement process requires an additional opportunity to initiate those screenings for potential barriers to participation not previously identified.

(b) Circumstances that require a determination of whether good cause (see OAR 461-130-0327) exists include disagreements about the case plan, irregular attendance at activities, missed appointments, failure to participate in a component of the case plan, and (in the JOBS program) refusal to accept or maintain employment.

(c) In the TA-DVS program, there are no participation requirements. The re-engagement process is intended to provide an opportunity to address problems with the case plan (see OAR 461-135-1230) and an opportunity to modify the case plan.

(3) In the JOBS program, the re-engagement process must include an assessment of the risk of harm posed to the children in the filing group by the reduction in aid payments and taking steps to ameliorate the risk.

(4) The client, the Department, or the Department's contractor may initiate the re-engagement process. The re-engagement process is not a required activity. The Department may not disqualify clients based on their failure to participate in the re-engagement process.

(5) The client or Department may invite partner agencies, Department contractors, persons currently working with the client, or other individuals who have information relevant to the re-engagement process to any appointments or meetings scheduled as part of the process.

(6) The re-engagement process ends when any of the following subsections applies:

(a) The Department and the client agree to a modified case plan.

(b) Efforts to re-engage are unsuccessful.

(c) In the JOBS, Pre-TANF, and REF programs:

(A) The Department has determined the client has met federally required participation rates (see OAR 461-001-0025);

(B) The client clearly indicates an intent not to participate in the re-engagement process;

(C) The client is willfully non-compliant and has the ability to be fully engaged;

(D) The client has no barriers or refuses to take appropriate steps to address identified barriers to participation in the program; or

(E) A decision is made by the Department that a client did not have good cause for not complying with a requirement of the JOBS program, and the client is able but unwilling to address the issue through activities that address barriers or through case plan modifications.

(d) In the SFPSS program, after a review team consisting of SFPSS program staff including the case manager, disability analyst, and appropriate medical professional determine the client does not have good cause for non-cooperation and no accommodations or modifications can be made to support the client being re-engaged.

(7) The re-engagement process must end unsuccessfully before the Department begins the process of disqualifying a client for a failure to comply with a requirement of the JOBS program.

(8) In the SFPSS program, when the re-engagement process ends unsuccessfully, a client removed from the program is returned to the TANF program.

Stat. Auth.: ORS 411.060, 418.045, 418.100, 2007 OL 861

Stats. Implemented: ORS 411.060, 418.045, 411.117, 418.100, 2007 OL 861

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 18-1998, f. & cert. ef. 10-2-98; 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

461-190-0241

Transition Services; JOBS

(1) A client who becomes ineligible for the Pre-TANF or TANF programs because of an increase in earned income is eligible for transition benefits and services for 12 months upon meeting the criteria in OAR 461-190-0211 for receiving support services (see OAR 461-001-0025) in the JOBS program. The total cost of JOBS support service payments may not exceed \$1,000 for the duration of the 12-month period. For clients whose eligibility ends for reasons other than income from new employment, the benefits and services are limited to completing any JOBS activity (see OAR 461-001-0025) in progress at the time program eligibility ends.

(2) The transition period begins on the date determined by the following:

(a) For clients participating in an OJT activity (see OAR 461-001-0025), the transition period begins:

(A) When TANF benefits end because of earned income, if there are three or fewer months left in the OJT contract.

(B) Three calendar months before the end of the OJT contract, if TANF benefits end because of the level of earned income when more than three months remain in the contract.

(b) For clients participating in a work supplementation activity (see OAR 461-001-0025), the transition period begins when the wage subsidy (grant diversion) to the employer ends.

(c) For all other clients, the transition period begins when Pre-TANF or TANF program benefits end.

Stat. Auth.: ORS 411.060, 418.100

Stats. Implemented: ORS 411.060, 418.100

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 23-1991(Temp), f. 10-31-91, cert. ef. 11-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 25-1998, f. 12-28-95, cert. ef. 1-1-98; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 11-2005(Temp), f. & cert. ef. 9-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-195-0501

Definitions

The definitions in this rule apply to programs covered by Chapter 461 of the Oregon Administrative Rules other than child care programs.

(1) Except as provided otherwise in section (4) of this rule, an overpayment is any of the following:

(a) A cash, medical or food stamp benefit received by or on behalf of a client, or a vendor payment made by the Department on behalf of a client, that exceeds the amount for which the client is eligible.

(b) Public assistance payments designated by the Department for a specific purpose which are spent by a person on an expense not approved by the Department and not considered a basic requirement under standards adopted by the Department pursuant to ORS 411.070.

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(c) Misappropriated public assistance when a person cashes and retains the proceeds of a check from the Department on which that person is not the payee and the check has not been lawfully endorsed or assigned to the person.

(d) Public assistance furnished for a need when that person is compensated by another source for the same need and the person fails to reimburse the Department when required by law.

(e) A cash benefit received by a client in the GA or SFPSS programs for a month for which the client receives a retroactive SSI lump-sum payment.

(f) A JOBS or SFPSS program support payment (see OAR 461-190-0211) used by a client for other than the intended purpose or issued when a client was not eligible for TANF as a result of fraud.

(2) Overpayments are categorized as follows:

(a) Except as otherwise provided in subsections (c) and (d) of this section, an administrative error overpayment is an overpayment caused by any of the following circumstances:

(A) The Department failed to reduce, suspend, or end benefits after timely receipt of information that required such action;

(B) The Department failed to use the correct benefit standard;

(C) The Department failed to compute or process a payment correctly;

(D) The Department failed to require a general assistance client to complete an interim assistance agreement; or

(E) The Department committed a procedural error that was no fault of the filing group or authorized representative.

(b) An administrative technical overpayment is an overpayment in a program other than the Food Stamp program caused by a client's failure to register for the JOBS program, to have a social security number, or to make a declaration of citizenship or alien status.

(c) A client error overpayment is an overpayment caused by misunderstanding or error on the part of a client, a client's receipt of unreduced benefits pending a hearing decision, a client's failure to return a benefit known by the client to exceed the correct amount, or a client's use of a JOBS or SFPSS program support payment (see OAR 461-190-0211) used for other than the intended purpose.

(d) A fraud overpayment occurs when an overpayment is determined to be an intentional program violation (see OAR 461-195-0601 and 461-195-0611) or is substantiated through a criminal prosecution.

(e) In the Food Stamp program, a provider error overpayment is an overpayment made to a drug or alcohol treatment center or residential care facility that acted as a client's authorized representative.

(3) In the Food Stamp program, trafficking is the buying or selling of food stamp benefits for cash or consideration other than eligible food; or the exchange for coupons of firearms, ammunition, explosives, or controlled substances (as defined at 21 U.S.C. 802).

(4) It is not an overpayment when:

(a) Specifically so provided by rule;

(b) The benefit is paid pending a contested case hearing in a disqualification case unless the client was ineligible for the benefit for a reason other than the disputed disqualification; or

(c) A client is found eligible as a result of an error in judgment by the Department when judgment is permitted and the eligibility decision was based on the best information available to the client and the Department.

Stat. Auth.: ORS 411.060, 411.816, 414.042, 418.100, 2007 Or. Laws Ch. 861

Stats. Implemented: ORS 411.060, 411.620, 411.640, 411.690, 411.816, 414.042, 418.100, 2007 Or. Laws Ch. 861

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2001(Temp), f. & cert. ef. 4-4-01 thru 6-30-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 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

461-195-0551

Methods of Recovering Overpayments

(1) For all programs, in addition to judicial process, the Department may recover overpayments through an agreed repayment plan, reduction in benefits, voluntary payment from the client, and offset of the debt. In medical programs, benefits are reduced to collect an overpayment only in the GAM program, and only non-medical benefits are reduced.

(2) The Department reduces current benefits to collect an overpayment only as follows:

(a) In the Food Stamp program, unless the Department and the client agree to a repayment plan and the filing group (see OAR 461-110-0370) meets the terms of the plan, the Department collects an overpayment from a liable filing group participating in the Food Stamp program by reducing

the food stamp allotment of the benefit group (see OAR 461-110-0750) each month as follows:

(A) For an overpayment caused by client error (see OAR 461-195-0501) or administrative error (see OAR 461-195-0501), 10 percent of the group's monthly allotment or \$10 a month, whichever is greater.

(B) For an overpayment caused by conduct that constituted an IPV (see OAR 461-195-0601), 20 percent of the group's monthly entitlement or \$20 a month, whichever is greater.

(b) In the GA, GAM, and OSIP programs, the Department may recover an overpayment by reducing cash benefit payments by the lesser of the following:

(A) The total overpayment amount.

(B) The total benefit amount.

(C) 10 percent of the client's total benefit requirement at the standard of need.

(c) For overpayments in the REF, SFPSS, and TANF programs, the Department:

(A) Allows only half of the 50 percent earned income deduction described in OAR 461-160-0160.

(B) Reduces the benefit payment for REF, SFPSS, and TANF, in an amount equal to 10 percent of the total benefit requirement of the benefit group at the full standard of need. The benefit payment after such reduction, when combined with all other income (before allowing the 50 percent earned income deduction), must be sufficient to provide the benefit group with 90 percent of the standard for a family with no income. In the TANF program, the cooperation incentive (see OAR 461-135-0210) is not included in the calculations prescribed by this paragraph.

(3) For overpayment of child care benefits, the Department may not recover an overpayment through reduction of a client's child care benefits.

(4) The Department may recover an overpayment by offset as follows:

(a) For all programs, the Department uses the collection services provided by the Department of Revenue and any other state or federal agency to collect a liquidated claim established by:

(A) A court judgment.

(B) A confession of judgment.

(C) A document signed or acknowledged by the debtor that acknowledges the debt, such as:

(i) The Department-designated form to acknowledge an IPV.

(ii) A plea-bargain agreement.

(iii) Any other document acknowledging the overpayment.

(D) A written notification of overpayment from the Department to the debtor, advising the debtor of the basis and amount of the overpayment and the right to request a hearing, if the debtor has exhausted his or her rights of administrative appeal.

(E) A written communication from the debtor acknowledging the debt.

(b) In cases that have both an underpayment and an overpayment in the same program, the Department offsets one against the other.

(c) The amount of any retroactive payment or restoration of lost benefits otherwise payable to the client, when the retroactive payment corrects a prior underpayment of benefits in the program in which the overpayment occurred.

(d) By offsetting the full amount of the overpayment against restored benefits owed to the benefit group or to another FS benefit group that a liable member of the overpaid group has joined.

(e) Through use of a warrant authorized by ORS 18.900 or 411.703. Upon issuance of the warrant, the Department may issue a notice of garnishment in accordance with ORS 18.854.

(5) A confession of judgment is used in the case of a client error overpayment. The Department may not file a confession of judgment while the client receives public assistance and may file one only if the client has refused to agree to or has defaulted on a repayment plan.

(6) The Department may not take collection action against a filing group while a member of the group is working under a JOBS Plus agreement.

Stat. Auth.: ORS 411.060, 411.660, 411.816, 418.100, 2007 OL Ch. 861

Stats. Implemented: ORS 18.854, 18.900, 411.630, 411.635, 411.660, 411.703, 411.816, 418.100, 2007 OL Ch. 861

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2001, f. & cert. ef. 11-1-01 thru 12-31-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 8-2004, f. & cert. ef. 4-1-04; 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

ADMINISTRATIVE RULES

461-195-0561

Compromise of Overpayment Claims

(1) This rule establishes the policy of the Department for compromising claims for overpayments in the Child Support, ERDC, Food Stamp, medical, SFPSS, and TANF programs. The Department may consider a request to compromise an overpayment claim only if the costs of administration and collection necessary to collect the account in full would likely exceed the current balance of the overpayment. In making the determination whether to compromise, the Department considers the requester's ability to repay the overpayment in full within a reasonable time, as evidenced by such factors as:

(a) Income less than 200 percent of the federal poverty level (see OAR 461-155-0180(6)); or

(b) Income and liquid assets that are small compared with the outstanding overpayment.

(2) The following limitations and considerations apply to the evaluation by the Department of a request to compromise an overpayment claim:

(a) The authority of the Department to compromise may be limited by federal or state law.

(b) The Department may allow a compromised claim to be paid in installments over a period not to exceed 90 days.

(c) The Department may compromise a claim only once it is a liquidated claim; liquidated claim is described in OAR 461-195-0551.

(d) The Department may compromise a claim that exceeds \$20,000 only to the extent permitted by the rules of the Secretary of State.

(e) Except for an overpayment in the child support program, the Department may not agree to compromise a claim for less than 75 percent of the total amount of the claim. In the child support program, the amount for which a claim will be compromised is determined following the applicable standards in OAR 137-055-6120(1).

(f) During the 12 months following the date of the compromise agreement, the Department reserves the right to collect the original, unmitigated claim through benefit reduction (see OAR 461-195-0551). This subsection does not apply to claims in the child support program.

(3) The following limitations apply to a request to compromise an overpayment:

(a) A request for compromise may be considered only if 36 months have passed since the requester was first notified of the overpayment.

(b) A request for compromise may be considered only if 12 months have passed since the requester was last eligible for and received benefits of the program in which the overpayment occurred or last received a direct provider payment for child care (see the rules in division 165 of this chapter of rules). This subsection does not apply to claims in the child support program.

(c) An overpayment caused by the requester's conduct is subject to compromise only if caused by his or her inadvertent error or by circumstances beyond his or her reasonable control.

(d) The Department may not compromise a claim if the requester has not made a good faith effort to repay the overpayment.

(e) The Department is more likely to approve a request to compromise if the requester has not previously caused an overpayment in the same program.

Stat. Authority: ORS 411.060, 411.816, 414.042, 418.100, 2007 OL 861
Stats. Implemented: ORS 411.060, 411.635, 411.816, 414.042, 418.100, 2007 OL 861
Hist.: AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08

461-195-0601

Intentional Program Violations; Defined

(1) In the child care programs, a provider commits an intentional program violation (IPV) by intentionally making a false or misleading statement or misrepresenting, concealing or withholding information related to his or her request to be eligible for a child care payment under OAR 461-165-0180 or a claim for a child care payment.

(2) In the Food Stamp program, an individual commits an intentional program violation by:

(a) Making a false or misleading statement or misrepresenting, concealing or withholding a fact relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp benefits; or

(b) Committing any act that constitutes a violation of the Food Stamp Act, the Food Stamp program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp benefits.

(3) In the SFPSS program, an individual commits an intentional program violation by intentionally:

(a) Making a false or misleading statement or misrepresenting, concealing, or withholding a fact for the purpose of establishing or maintaining eligibility for SFPSS or increasing, or preventing a reduction in, the amount of the SFPSS grant; or

(b) Committing any act intended to mislead or to conceal or withhold information for the purpose of establishing or maintaining eligibility for SFPSS or increasing, or preventing a reduction in, the amount of the SFPSS grant.

(4) In the TA-DVS program, an individual commits an IPV by intentionally and without intimidation or coercion by an abuser:

(a) Making a false or misleading statement or misrepresenting, concealing, or withholding a fact for the purpose of establishing eligibility for or receiving a benefit from the TA-DVS program; or

(b) Committing any act intended to mislead or to conceal or withhold information for the purpose of establishing eligibility for or receiving a benefit from the TA-DVS program.

(5) In the TANF program, an individual commits an intentional program violation by intentionally:

(a) Making a false or misleading statement or misrepresenting, concealing, or withholding a fact for the purpose of establishing or maintaining eligibility for TANF or increasing, or preventing a reduction in, the amount of the TANF grant; or

(b) Committing any act intended to mislead or to conceal or withhold information for the purpose of establishing or maintaining eligibility for TANF or increasing, or preventing a reduction in, the amount of the TANF grant.

Stat. Authority: ORS 411.060, 411.660, 411.816, 418.100, 2007 OL 861
Stats. Implemented: ORS 411.060, 411.630, 411.635, 411.660, 411.816, 418.100, 2007 OL 861
Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 8-2004, f. & cert. ef. 4-1-04; 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

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

Adm. Order No.: SSP 6-2008(Temp)

Filed with Sec. of State: 2-29-2008

Certified to be Effective: 3-1-08 thru 8-28-08

Notice Publication Date:

Rules Amended: 461-155-0250, 461-155-0290, 461-155-0291, 461-155-0295, 461-160-0800

Rules Suspended: 461-160-0810, 461-160-0820, 461-160-0850

Subject: 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 increase the income standard for the OSIP-EPD and OSIPM-EPD (Employed Persons with Disabilities) programs. The amended rule will raise the adjusted income standard for the EPD program from \$2,128 per month to \$2,167 per month.

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 changes are also pending as part of the permanent rulemaking process.

OAR 461-160-0800 about participant fees in the Oregon Supplemental Income Program Employed Persons with Disabilities (OSIP-EPD) and Oregon Supplemental Income Program Medical Employed Persons with Disabilities (OSIPM-EPD) programs is being amended to eliminate the current cost share and 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 countable income and the federal poverty level. 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 461-160-0810, 461-160-0820, and 461-160-0850 are being suspended. OAR 461-160-0810 is about determining the cost share and room and board payments for Oregon Supplemental Income Program Medical Employed Persons with Disabilities (OSIPM-EPD) clients residing in a community-based care facility. OAR 461-160-

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0820 is about determining the cost share for OSIPM-EPD clients residing in a nursing facility. OAR 461-160-0850 is about determining the premiums for clients in the Oregon Supplemental Income Program Employed Persons with Disabilities (OSIP-EPD) and OSIPM-EPD programs.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-155-0250

Income and Payment Standard; OSIP, OSIPM

(1) For an OSIP (except OSIP-EPD) or OSIPM (except OSIPM-EPD) client in long-term care or in a waived nonstandard living arrangement (see OAR 461-001-0000), the countable income limit standard is 300 percent of the full SSI standard for a single individual. Other OSIP and OSIPM clients do not have a countable income limit.

(2) The non-SSI OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, and other items. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(3) The standard in this section is used as the adjusted income limit for non-SSI OSIP and OSIPM clients. The OSIP-AB and OSIPM-AB adjusted income standard includes a transportation allowance. See OAR 461-155-0020 for the adjusted number in the household. The total standard is: [Table not included. See ED. NOTE.]

(4) To be eligible for OSIP (except OSIP-EPD or OSIP-IC), a person must be receiving SSI or be eligible for an ongoing special need. The payment standard for SSI/OSIP clients living in the community is the SIP (supplemental income payment) amount. The SIP is a need amount added to any other special or service needs to determine the actual payment. In some cases, the need amount is zero.

(a) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is less than \$20: [Table not included. See ED. NOTE.]

(b) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is \$20 or more: [Table not included. See ED. NOTE.]

(c) The SSI/OSIP-AB standard includes a transportation allowance. The standard for two assumes one individual is blind and the other is not. If both are blind, \$20 is added to the SIP amount.

(d) For spouses who each receive SSI and receive services in an AFC, ALF or RCF, an amount is added to each person's SIP payment that equals the difference between the individual's income (including SSI and other income) and the OSIP standard for a one-person need group.

(e) When one or both spouses receive SSI and are not included in subsection (d) of this section, the two-person need group is used to determine the SIP amount. This amount is used even if one (or both) of the individuals is receiving services and has a need group of one according to OAR 461-110-0630.

(5) In the OSIP and OSIPM programs, individuals in a nursing facility or an ICF-MR are allowed the following amounts for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

(6) In the OSIP-EPD and OSIPM-EPD programs, the adjusted earned income limit is 250 percent of the 2008 federal poverty level for a family of one. This 250 percent limit equals \$2,167 per month or \$26,004 per year.

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

Stat. Auth.: ORS 411.060, 411.070

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; Suspended by SSP 3-2007(Temp), f. & cert. ef. 3-9-07 thru 6-30-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; Suspended by SSP 5-2007(Temp), f. 3-30-07, cert. ef. 4-1-07 thru 6-30-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08

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. 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

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

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

461-160-0800

Determining Cost Share; OSIP-EPD, OSIPM-EPD (Including In-Home Services)

(1) Individuals who receive OSIP-EPD and OSIPM-EPD program benefits will have a *participant fee* (see section (2) of this rule) but do not have a *client liability* as discussed in OAR 461-160-0620.

(2) In the OSIP-EPD and OSIPM-EPD programs, the participant fee is calculated, using the Federal Poverty Level (FPL) (see OAR 461-155-0180) and the individual's total countable (see OAR 461-001-0000) income as follows:

(a) For clients with *countable income* less than 75 percent of the FPL, the participant fee is \$0.

(b) For clients with *countable income* equal to or greater than 75 percent but less than 100 percent of the FPL, the participant fee is \$50 per month.

(c) For clients with countable income equal to or greater than 100 percent but less than 250 percent of the FPL, the participant fee is \$100 per month.

(d) For clients with countable income equal to or greater than 250 percent of the FPL, the participant fee is \$150 per month.

(3) The participant fee under section (2) of this rule must be paid each month as a condition of eligibility for as long as the individual is an OSIP-EPD or OSIPM-EPD client.

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(4) OSIP-EPD and OSIPM-EPD clients in a licensed community-based care facility must pay room and board costs in addition to their participant fees.

(5) The local office may waive unpaid participant fees if the individual provides verification (OAR 461-115-0610) of significant economic difficulty, such as, but not limited to, homelessness, divorce, domestic violence (see OAR 461-001-0000), or illness.

Stat. Auth.: ORS 411.060, 411.070, 414.042
Stats. Implemented: ORS 411.060, 411.070, 414.042
Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08

461-160-0810

Determining Cost Share and Room and Board Payments; OSIPM-EPD Clients Residing in a Community-Based Care Facility

This rule explains how to determine *cost share* and room and board payments for OSIPM-EPD clients in a residential community-based care facility.

(1) All unearned income, except for Personal Incidental Funds, special needs and other applicable income deductions, must be given to the provider for room and board. The remaining unearned income is applied to the cost of services.

(2) If the client's unearned income is insufficient to pay the cost of room and board, the client must use both earned and unearned income to pay the provider the Room and Board Standard.

(3) A client who has only earned income must pay the provider the Room and Board Standard from earned income.

(4) Clients must make the payments described in this rule each month as a condition of eligibility.

Stat. Auth.: ORS 411.060, 411.070 & 414.042
Stats. Implemented: ORS 411.060, 411.070 & 414.042
Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; Suspended by SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08

461-160-0820

Determining Cost Share; OSIPM-EPD in Nursing Facility

(1) If client has unearned income, all such income, except for \$30, shall be given to provider/state.

(2) If there is no unearned income, the client will not be required to pay a *cost share*.

(3) This amount must be paid each month as a condition of eligibility for as long as the individual has unearned income.

Stat. Auth.: ORS 411.060, 411.07 & 414.042
Stats. Implemented: ORS 411.060, 411.07 & 414.042
Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; Suspended by SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08

461-160-0850

Determining Post-Eligibility Premium; OSIP-EPD, OSIPM-EPD

(1) *Premiums* are based on the total of the client's earned income plus any unearned income.

(2) Calculate *premium* amount in the following manner:

(a) Determine total income by adding any unearned income not given to the state as a *cost share* and any earned income, or, if the client is a resident of a Community-Based Care Facility, any earned income remaining after paying the Room and Board standard or Maintenance Standard;

(b) From total income, the mandatory taxes for an allowance of one are subtracted.

(c) Subtract any expenses that have been determined to increase the individual's independence and *employment* potential (IRWEs, BWEs & EIEs). Do not deduct taxes again as a *Blind Work Expense*.

(d) Subtract 200% of the Federal Poverty Level (FPL) for a family size of one (see OAR 461-155-0290).

(e) The *premium* is determined by multiplying the remainder by the following percentage: [Table not included. See ED. NOTE.]

(3) Premium collection will not begin until the second continuous eligibility period.

(a) Calculate average total income and IRWE and EIE costs for previous six months.

(b) Determine premium amount using these averages.

(c) Use this premium amount for the next six months.

(4) After the initial eligibility period, premiums are determined semi-annually, based on the previous six month's income and independence and *employment* related expenses.

(5) *Premium* calculations may be performed more often if client provides information that would cause the *premium* amount to change during the eligibility period.

(6) This *premium* must be paid each month, thereafter, as a condition of eligibility.

(7) The local office may waive unpaid *premiums* if the client provides proof of significant economic difficulty, such as but not limited to, homelessness, divorce, domestic violence, illness, etc.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 411.060, 411.070 & 414.042
Stats. Implemented: ORS 411.060, 411.070 & 414.042
Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; Suspended by SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08

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**Department of Human Services,
Children, Adults and Families Division:
Vocational Rehabilitation Services
Chapter 582**

Rule Caption: Changes to Rules and Procedures Needed to Address Requirements of House Bill/Chapter 209.

Adm. Order No.: VRS 2-2008

Filed with Sec. of State: 3-3-2008

Certified to be Effective: 3-3-08

Notice Publication Date: 2-1-2008

Rules Amended: 582-001-0010, 582-070-0020, 582-080-0020

Subject: Recently enacted House Bill 2633 creates definitions for "vocational training" and "vocational rehabilitation training" and limits the schools and programs to which the Department of Human Services (DHS) may refer individuals for 'vocational training' to the following:

A school that has accreditation recognized by the United States Department of Education.

A school that has been approved by the Oregon Student Assistance Commission through the Office of Degree Authorization to offer and confer degrees in Oregon.

A community college.

A state institution of higher education within the Oregon University System.

The Oregon Health Sciences University.

A career school licensed under ORS 345.010 to 345.450.

An apprenticeship program that is registered with the State Apprenticeship and Training Council.

The rule would create definitions for "vocational training" and "vocational rehabilitation training" in conformance with the requirements of House Bill 2633 and would limit the schools to which Office of Vocational Rehabilitation Services can refer clients for "vocational training" to those specified in House Bill 2633 (see above for the listing.)

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:

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(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.

(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:

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- (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

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) "Physical and mental restoration services" refers to —

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(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.

(34) "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.

(35) "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.

(36) "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).

(37) "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 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.

(38) "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.

(39) "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.

(40) "Severe mental or physical impairment" refers to the use of this term in the federal Rehabilitation Act of 1973, as amended.

(41) "State plan" refers to the State plan for vocational rehabilitation services submitted by OVRs under **34 CFR 361.10**.

(42) "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.

(43) "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.

(44) "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.

(45) "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 facilitate the achievement of the employment outcome identified in the student's individualized plan for employment.

(46) "Transitional employment," as used in the definition of "Supported employment," refers to a series of temporary job placements in

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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.

(47) "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.

(48) "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**.

(49) "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.

(50) "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

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

(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.

(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 eval-

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uation, 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.

(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

582-080-0020

Standards for Selection of Vendors

The following standards supplement any other requirements that may apply to the same vendors. In all instances, the authorizing vocational rehabilitation counselor (with the guidance of the Field Services Manager) has the primary responsibility to assure that the vendor is on the OVRS approved vendor list and meets the applicable standards. When there is no client preference or circumstances which would dictate otherwise, vendor choice will be made from the pool of approved vendors available in the community, moving consecutively through the list in alphabetical order:

(1) Licensed professional individuals — (physicians, dentists, pharmacists, psychologists, academic teachers, etc.). Licensable professional individuals must be licensed by the appropriate state licensing boards as required by law to provide services as private practitioners. It is the responsibility of the vocational rehabilitation counselor to use only licensed individuals. If the vocational rehabilitation counselor has reason to believe that a professional vendor is not appropriately licensed, the counselor is to discontinue further use until the matter can be cleared by OVRS. For additional requirements refer to OAR 582-010-0005 through 582-010-0030.

(2) Service organizations — (hospitals, medical groups, mental health clinics, child care facilities, placement agencies, group homes, foster homes, nursing homes, sheltered workshops, community rehabilitation programs, etc.). Service organizations must be qualified under state law or certified or accredited by a recognized state or national organization or be official arms of state or local government, and/or approved under the terms of OAR Chapter 582 for vendor selection. For all practicing groups of licensable, certifiable or other professionals, sections (1), (5), and (6) of this rule apply. For additional requirements pertaining to providers of community rehabilitation services refer to OAR 582-010-0005 through 582-010-0030.

(3) Commercial vendors — (supplies or material goods, transportation, insurance, shipping, and other commercial services, etc.). Commercial vendors must conform to all applicable state licensing requirements. All purchases will be made in accordance with state purchasing policies. In addition, the vendor must be able to provide the requested goods and services at the levels of quantity and quality and in the required time period authorized by the vocational rehabilitation counselor.

(4) Training vendors — (universities, community colleges, proprietary schools and OJT trainers, and correspondence schools, etc.). Training vendors must conform to all applicable licensing requirements. OVRS will only refer eligible individuals for vocational training to those schools and programs specified in 582-070-0020(3). Degree granting academic institutions must be accredited by a regional or national accrediting organization. Except when circumstances such as overall cost or specific need of a client justify otherwise, state-supported schools are used. OVRS conducts studies based on periodic sampling of training vendors to assure acceptable quality, reasonable costs, and effective results from the services provided. The studies may, on an annual basis, include a review of factors such as cost, utilization levels and rehabilitation survival rates for each community rehabilitation program or major training vendor used. OJT vendors will only be utilized if the vocational rehabilitation counselor and (as appropriate) the counselor's supervisor are assured in terms of their professional judgment, that the trainer/employer can deliver the training services as per the terms of the OJT contract.

(5) Certified professionals — (interpreters for the deaf, psychological and vocational counselors, occupational therapists, etc.). Certifiable professionals must possess a current certificate from a recognized state or national professional association or organization. If the vocational rehabilitation counselor questions the validity of the credentials, the counselor should refer the matter to the CRP Coordinator for guidance.

(6) Non-certified or non-licensed professionals — (e.g. tutors, peer mentors). In instances where a professional individual is not subject to licensing requirements or the OVRS approval process for providers of community rehabilitation services, the qualifications of the vendor must be determined to the satisfaction of the authorizing vocational rehabilitation counselor, the client and (as appropriate) the counselor's supervisor prior to the authorization of services. In addition:

(A) Peer mentors and tutors must be approved by the CRP Coordinator prior to placement on the Approved Vendor List;

(B) OVRS requires that tutors and peer mentors comply with DHS criminal history checks at the time of application for placement on the Approved Vendor List, re-application for placement on the Approved Vendor List, and if required by OVRS as a result of information received about vendor qualifications, behavior or performance; and

(C) OVRS requires that peer mentors submit proof of insurance at the level established under Department of Administrative Services guidelines.

Stat. Auth.: ORS 344

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Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730
Hist.: VRD 6-1978, f. 5-18-78, ef. 6-1-78; VRD 3-1992, f. & cert. ef. 4-20-92; VRD 4-1993,
f. & cert. ef. 11-1-93; VRS 2-2003, f. & cert. ef. 12-31-03; VRS 5-2004, f. & cert. ef. 8-5-04;
VRS 2-2008, f. & cert. ef. 3-3-08

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

Rule Caption: February 08 Client Co-payment.

Adm. Order No.: DMAP 5-2008

Filed with Sec. of State: 2-28-2008

Certified to be Effective: 3-1-08

Notice Publication Date: 1-1-2008

Rules Amended: 410-120-1230

Subject: The General Rules program rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to clients. DMAP reduced OHP pharmaceutical co-payments to coordinate drug benefit policies to provide consistent incentives to prescribe, dispense and use preferred drugs as determined by the established evidence review process for the Practitioner-Managed Prescription Drug Plan. It provides a zero co-pay option for many of the essential medications. The copay amounts for prescription drugs is lowered or removed for certain classes of medication. The copay for the preferred Plan Drug List medications, generics not on the Plan Drug list that cost \$10.00 or less, and the preferred Plan Drug List brand medications no longer have a copay. Nonpreferred Plan Drug List generic medications and generics that are not on the Plan Drug List, but cost more than \$10.00 have a \$1.00 copay. The copay for brand medications remains at \$3.00.

Rules Coordinator: Darlene Nelson—(503) 947-5221

410-120-1230

Client Co-payment

(1) Oregon Health Plan (OHP) Plus Clients shall be responsible for paying a co-payment for some services. This co-payment shall be paid directly to the Provider.

(2) The following services are exempt from co-payment:

- (a) Emergency medical services, as defined in OAR 410-120-0000;
- (b) Family planning services and supplies;
- (c) Prescription drugs ordered through Division of Medical Assistance Program's (DMAP) Mail Order (a.k.a., Home-Delivery) Pharmacy program;

(d) Any service not listed in (10) below.

(3) The following Clients are exempt from co-payments:

- (a) Services provided to pregnant women;
- (b) Children under age 19;
- (c) Any Client receiving services under the Home and Community based waiver and Developmental Disability waiver, or is an inpatient in a hospital, Nursing Facility (NF), Intermediate Care Facility for the Mentally Retarded (ICF/MR);

(d) American Indian/Alaska Native (AI/AN) Clients who are members of a federally recognized Indian tribe or receive services through Indian Health Services (IHS), tribal organization or services provided at an Urban Tribal Health Clinic as provided under P.L. 93-638.

(4) Clients enrolled in an DMAP contracted Prepaid Health Plan (PHP) will be exempt from co-payments for any services paid for by their plan(s).

(5) Services to a Client cannot be denied solely because of an inability to pay an applicable co-payment. This does not relieve the Client of the responsibility to pay, nor does it prevent the Provider from attempting to collect any applicable co-payments from the Client; the amount is a legal debt, and is due and payable to the Provider of service.

(6) A Client must pay the co-payment at the time service is provided unless exempted (see (2), (3) and (4) above).

(7) The Provider should not deduct the co-payment amount from the usual and customary fee submitted on the claim. Except as provided in subsection (2) of this rule, DHS will deduct the amount of the co-payment from the amount paid to the Provider (whether or not Provider collects the co-payment from the Client). If the DMAP paid amount is less than the required co-payment, the co-payment amount will be equal to what DMAP would have paid, unless the Client or services is exempt according to exclusions listed in (2), (3) and (4) above.

(8) Unless specified otherwise in individual program rules, and to the extent permitted under 42 CFR 1001.951 – 1001.952, DMAP does not require Providers to bill or collect a co-payment from the Medicaid Client. The Provider may choose not to bill or collect a co-payment from a Medicaid Client, however, DMAP will still deduct the co-payment amount from the Medicaid reimbursement made to the Provider.

(9) OHP Standard co-payments are eliminated for OHP Standard Clients effective June 19, 2004. Elimination of co-payments by this rule shall supercede any other General Rule, 410-120-0000 et seq; any Oregon Health Plan Rule, OAR 410-141-0000 et seq; or individual DMAP program rule(s), that contain or refer to OHP Standard co-payment requirements.

(10) Services which require co-payments are listed in Table 120-1230-1:

(a) For the purposes of this rule, dental diagnostic services are considered oral examinations used to determine changes in the patient's health or dental status. Diagnostic visits include all routine cleanings, x-rays, laboratory services and tests associated with making a diagnosis and/or treatment. One co-payment assessed per Provider/per visit/per day unless otherwise specified. Co-payment applies regardless of location, i.e. Provider's office or Client's residence;

(b) Mental Health Service co-payments are defined as follows:

(A) Inpatient hospitalization- includes ancillary, facility and professional fees (DRG 424-432);

(B) Outpatient hospital- Electroconvulsive (ECT) treatment (Rev code 901) including facility, professional fees (90870-90871) and anesthesiology fees (00104);

(C) Initial assessment/evaluation by psychiatrist or psychiatric mental health nurse practitioners (90801);

(D) Medication Management by psychiatrist or psychiatric mental health nurse practitioner (90862);

(E) Consultation between psychiatrist/psychiatric mental health nurse practitioner and primary care physician (90887).

Table 120-1230-1

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

Stat. Auth.: ORS 409

Stat. Implemented: ORS 414.065

Hist.: OMAP 73-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 73-2003, f. & cert. ef. 10-1-03; OMAP 39-2004(Temp), f. 6-14-04 cert. ef. 6-19-04 thru 11-30-04; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 5-2008, f. 2-28-08, cert. ef. 3-1-08

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Rule Caption: Coordination with DS agency-wide rules related to MMIS/enrollment and claims submission process.

Adm. Order No.: DMAP 6-2008(Temp)

Filed with Sec. of State: 3-14-2008

Certified to be Effective: 3-14-08 thru 9-1-08

Notice Publication Date:

Rules Amended: 410-120-0025

Subject: The General Rules Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to clients. Rather than use the standard rule filing process, DMAP needs to temporarily amend 410-120-0025 to expedite coordination and consistency between provider enrollment and claims process rules recently adopted by the Department of Human Services (new DHS rules), effective January 1, 2008, and similar current DMAP rules. The new DHS rules were adopted, on a department-wide basis, for implementation of the improved MMIS system to provide a basic framework and enhance provider enrollment functions for medical assistance providers. The new DHS rules, together with DMAP rules, inform providers, and potential providers, about the provider enrollment process and how to submit claims for payment. Text will be revised to improve readability and take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-0025

Administration of Division of Medical Assistance Programs' Regulation and Rule Precedence

(1) The Department of Human Services (DHS) and its Division of Medical Assistance Programs (DMAP), may adopt reasonable and lawful policies, procedures, rules and interpretations to promote the orderly and efficient administration of medical assistance programs including the Oregon Health Plan pursuant to ORS 414.065 (generally, fee-for-service), ORS 414.725 (Prepaid Health Plans), and ORS 414.115 to 414.145 (serv-

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ices contracts) subject to the rulemaking requirements of Oregon Revised Statutes and Oregon Administrative Rule (OAR) procedures.

(2) In applying its policies, procedures, rules and interpretations, DMAP will construe them as much as possible to be complementary. In the event that DMAP policies, procedures, rules and interpretations may not be complementary, DMAP will apply the following order of precedence to guide its interpretation:

(a) For purposes of the provision of covered medical assistance to DMAP Clients, including but not limited to authorization and delivery of service, or denials of authorization or services, DMAP, Clients, enrolled Providers and the Prepaid Health Plans will apply the following order of precedence:

(A) Those federal laws and regulations governing the operation of the medical assistance program and any waivers granted DMAP by the Centers for Medicare and Medicaid Services to operate medical assistance programs including the Oregon Health Plan;

(B) Oregon Revised Statutes governing medical assistance programs;

(C) Generally for Prepaid Health Plans, requirements applicable to the provision of covered medical assistance to DMAP Clients are provided in OAR 410-141-0000 through 410-141-0860, Oregon Health Plan Administrative Rules for Prepaid Health Plans, inclusive, and where applicable, DMAP General Rules, OAR 410-120-0000 through 410-120-1980, and the Provider rules applicable to the category of medical service;

(D) Generally for enrolled fee-for-service Providers or other contractors, requirements applicable to the provision of covered medical assistance to DMAP Clients are provided in DMAP General Rules, OAR 410-120-0000 through 410-120-1980, the Prioritized List and program coverage described in OAR 410-141-0480 to 410-141-0520, and the Provider rules applicable to the category of medical service;

(E) Any other applicable duly promulgated rules issued by DMAP and other offices or units within the Department of Human Services necessary to administer the State of Oregon's medical assistance programs, such as Electronic Data transaction rules in OAR 407-120-0100 to 407-120-0200; and

(F) The basic framework for provider enrollment in OAR 407-120-0300 through 407-120-0380 generally apply to providers enrolled with DHS, subject to more specific requirements applicable to the administration of the Oregon Health Plan and medical assistance programs administered by DMAP. For purposes of this rule, "more specific" means the requirements, laws and rules applicable to the provider type and covered services described in subsections (A)–(E) of this section.

(b) For purposes of contract administration solely as between DMAP and its Prepaid Health Plans, the terms of the applicable contract and the requirements in subsection (2)(a) of this rule applicable to the provision of covered medical assistance to DMAP Clients.

(A) Nothing in this rule shall be deemed to incorporate into contracts provisions of law not expressly incorporated into such contracts, nor shall this rule be deemed to supercede any rules of construction of such contracts that may be provided for in such contracts.

(B) Nothing in this rule gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly or otherwise, to any person or entity unless such person or entity is identified by name as a named party to the contract.

Stat. Auth.: ORS 409.010, 409.110 & 409.050

Stats. Implemented: ORS 414.065

Hist.: OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 6-2008(Temp), f. & cert. ef. 3-14-08 thru 9-1-08

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**Department of Human Services,
Public Health Division
Chapter 333**

Rule Caption: Allows some benevolent organizations that provide food to the needy to serve home prepared foods.

Adm. Order No.: PH 3-2008

Filed with Sec. of State: 3-5-2008

Certified to be Effective: 3-5-08

Notice Publication Date: 1-1-2008

Rules Amended: 333-150-0000

Subject: The Oregon Department of Human Services, Public Health Division is amending the Food Sanitation Rules, OAR 333-150-0000 to allow benevolent organizations that provide foods to needy people to accept donated home-prepared foods. These rules balance the

need to feed hungry individuals with the public health issues surrounding this activity.

Rules Coordinator: Judy Murdza—(971) 673-0561

333-150-0000

Food Sanitation Rule

(1) Authority and Purpose.

(a) This rule is authorized by ORS 624.100.

(b) This rule establishes definitions, sets standards for management and personnel, food protection, and equipment and facilities, water supply, sewage disposal, provides for food establishment plan review, and employee restriction to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

(2) Incorporation by Reference. The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 1999, Chapters 1 through 8 is adopted and incorporated by reference.

(3) Deletions. The following sections, paragraphs or subparagraphs of the 1999 FDA Food Code are deleted in their entirety: 1-201.10(B)(36), 2-103.11(H), 2-201.11, 2-201.12 (B), (C) and (D), 2-201.13(C) and (D), 3-201.16, 3-301.11(C), 3-401.11(D)(3), 4-301.12(C)(5), (D) and (E), 4-501.115, 4-603.16(B) and (C), 8-302.11, 8-302.14(E), 8-401.10(B), 8-401.20, 8-402.20(A)(3), 8-402.40, 8-406.11, 8-501.40 and Annex 1 through 8.

(4) Additions and Amendments.

(a) Amend subparagraph 1-201.10(B)(1)(a) to read: "Accredited program" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals or approved by the Department of Human Services.

(b) Add a new subparagraph 1-201.10(B)(1.1) to read: "Actively cooled" means once the temperature of a potentially hazardous food has fallen below 60 degrees C (140 degrees F), it is placed in cooling or cold holding equipment and cooled according to sections 3-501.14 and 3-501.15.

(c) Add a new subparagraph 1-201.10(B)(4.1) to read: "Assembly" means the act of putting together foods that do not require further preparation. This includes, but is not limited to, placing a hot dog on a bun, or placing beans, lettuce and cheese on a tortilla.

(d) Add a new subparagraph 1-201.10(B)(5.1) to read: "Base of Operation" means the licensed restaurant, commissary or warehouse that services a mobile unit or vending operation.

(e) Add a new subparagraph 1-201.10(B)(5.2) to read: "Benevolent Meal Site" means:

(A) A periodic food service operation run by a benevolent organization that provides food to the needy or indigent without charge; and

(B) The meal service does not operate from a permanent kitchen facility.

(f) Add a new subparagraph 1-201.10(B)(7.1) to read: "Catering" means the preparation of food in an approved food establishment and the transportation of such food for service and consumption at some other site.

(g) Add a new subparagraph 1-201.10(B)(9.1) to read: "Close" means to summarily stop the operation of a food establishment pursuant to ORS 624.085 and ORS 624.370.

(h) Add a new subparagraph 1-201.10(B)(10.1) to read: "Code" shall have the same meaning as rule.

(i) Add a new subparagraph 1-201.10(B)(11.1) to read: "Combination Food Service Establishment" means any food establishment located within a single structure or at a single site, but which is engaged in activities which are subject to licensing or inspecting requirements of both the Department of Human Services and the Oregon Department of Agriculture, and the regulated activities are common to the same operator.

(j) Add a new subparagraph 1-201.10(B)(11.2) to read: "Commercial warewashing machine" means a warewashing machine designed and manufactured specifically for use in a food service establishment such as a restaurant and not for domestic or light-commercial purposes.

(k) Add a new subparagraph 1-201.10(B)(12.1) to read: "Commissary" means a commissary catering establishment, restaurant, or any other place in which, food, beverage, ingredients, containers, or supplies are kept, handled, packaged, prepared or stored, and from which vending machines or mobile units are serviced.

(l) Add a new subparagraph 1-201.10(B)(12.2) to read: "Complete Inspection" means any inspection conducted at the election of the licensing agency evaluating for all items on the inspection form.

(m) Add a new subparagraph 1-201.10(B)(12.3) to read: "Condiments" means garnishes, toppings, or seasonings that are added to a

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food to enhance or compliment the flavor, such as diced onions, dice tomatoes, hot sauce, ketchup, mayonnaise, mustard, relish, salt, shredded cheese and sugar.

(n) Add a new subparagraph 1-201.10(B)(18.1) to read: "Critical violations" means those items weighted zero (0), four (4) or (5) points on the Inspection Report or the Inspectional Guide.

(o) Add a new subparagraph 1-201.10(B)(18.2) to read: "Critical violations creating an imminent danger to public health" means those critical violations in which at least one of the following conditions exists:

(A) Food and drink is spoiled, unwholesome, or contaminated with pathogenic or fecal organisms, toxic chemicals, insect or rodent parts or excreta, or other harmful substances or articles;

(B) Potentially hazardous foods have been kept at temperatures above 45 degrees F. and below 140 degrees F. for four (4) hours or more;

(C) Food employee has a reportable disease or medical condition under section 2-201.11.

(p) Add a new subparagraph 1-201.10(B)(18.3) to read: "Critical violations creating a potential danger to public health" means all critical violations other than those that create an imminent danger to public health.

(q) Add a new subparagraph 1-201.10(B)(18.4) to read: "Critical violations creating a significantly increased risk for foodborne illness" include:

(A) Potentially hazardous foods at improper temperatures.

(B) Cross contamination of raw to ready to eat foods.

(C) Poor personal hygiene and handwashing.

(r) Add a new subparagraph 1-201.10(B)(18.5) to read: "Danger to public health" is a condition which is conducive to propagation or transmission of pathogenic organisms or, a chemical or physical hazard which presents a reasonably clear possibility that the public is exposed to physical suffering or illness.

(s) Add a new subparagraph 1-201.10(B)(18.6) to read: "Department" means the Department of Human Services.

(t) Add a new subparagraph 1-201.10(B)(18.7) to read: "Director" means the Director of the Department of Human Services or authorized representative.

(u) Amend subparagraph 1-201.10(B)(25)(a) to read: "Equipment" means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, meat tenderizer, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

(v) Amend subparagraph 1-201.10(B)(31) to read: Food Establishment

(A) "Food establishment" means an operation that prepares, assembles, packages, serves, stores, vends, or otherwise provides food for human consumption.

(B) "Food establishment" includes but is not limited to:

(i) Bars, bed and breakfast facilities, cafeterias if open to the public, catered feeding locations, caterers, coffee shops, commissaries, conveyance used to transport people, hospitals if open to the public, hotels, microbreweries, motels, private clubs if open to the public, restaurants, satellite sites, senior citizen centers, snack bars, taverns, vending locations, warehouses, or similar food facilities;

(ii) An operation that is conducted in a mobile food unit, temporary food establishments, or permanent facility or location; where consumption is on or off premises; and regardless of whether there is a charge for the food.

(iii) The premises of a fraternal, social, or religious organization where food is prepared for the public.

(iv) Except as specified in 1-201.10(B)(31)(c)(xiv), school food service that is provided by a private person, business, or organization; and that serve persons other than enrolled students, invited guests or staff.

(v) That relinquishes possession of food to a consumer directly through a restaurant takeout order.

(C) "Food establishment" does not include:

(i) An establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) A produce stand that offers only whole, uncut fresh fruits and vegetables;

(iii) A food processing plant;

(iv) A private home where food is prepared or served for family and guests, and where the public is not invited.

(v) A private home that receives catered or home-delivered food.

(vi) An establishment licensed and inspected by the Oregon Department of Agriculture.

(vii) An establishment or organization that prepares or sells the following food items shall be exempt from licensure and the provisions of ORS 624.010 to 624.120, and 624.310 to 430:

(I) Candy, candied apples, cookies and non-potentially hazardous confections;

(II) Commercially prepackaged ice cream and frozen desserts;

(III) Commercially pickled products, commercially processed jerky, nuts, nutmeats, popcorn, and prepackaged foods such as potato chips, pretzels, and crackers;

(IV) Unopened bottled and canned non-potentially hazardous beverages to include alcoholic beverages;

(V) Coffee and tea, with non-potentially hazardous ingredients;

(VI) Hot beverages prepared by the customer from individually packaged powdered mixes and water; and

(VII) Other food items as determined by the Department of Human Services.

(viii) Private vehicles used for home deliveries.

(ix) Personal chef who prepares food for an individual or private party. The personal chef may purchase food from a grocery store, but shall not store food or prepare food in advance. The personal chef may use his or her own equipment, utensils and spices.

(x) Continental breakfast served by a traveler's accommodation licensed under ORS 446 and that is limited to the following: individual or bulk dispensed containers of commercially prepared juices; commercially prepared non-potentially hazardous pastries; whole uncut fresh fruit with peel, coffee and tea with non-potentially hazardous ingredients.

(xi) Except as specified in 1-201.10(B)(31)(b)(i), mobile food units that are operated by a market, are located on the property of the market and are under the jurisdiction of the Oregon Department of Agriculture.

(xii) Except as specified in 1-201.10(B)(31)(b)(i), outdoor barbecues operated by a market that are located on the property of the market and are under the jurisdiction of the Oregon Department of Agriculture.

(xiii) Food service that is provided by a state, county, or other governmental entity.

(xiv) Except as specified in 1-201.10(B)(31)(b)(iv), school food service that is provided by a state, county, or other governmental entity; or is providing food to students, teachers, other school staff, and invited guests.

(xv) Any person holding a "one-day, special retail beer or special retail wine license" for a private residence; or anyone who possesses a "temporary" license from the Oregon Liquor Control Commission who serves alcoholic beverages to the public, but serves only foods exempted under 1-201.10(B)(31)(c)(vii) and uses single-service articles.

(xvi) A bed and breakfast facility with two or less rooms for rent on a daily basis.

(xvii) A home processor licensed by the Oregon Department of Agriculture that serves only prewrapped, non-potentially hazardous food at a farmer's market.

(w) Amend subparagraph 1-201.10(B)(32)(a) to read: "Food processing plant" means a commercial operation or a domestic kitchen licensed by the Oregon Department of Agriculture that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.

(x) Amend subparagraph 1-201.10(B)(41) to read: "Imminent health hazard" means the same as 1-201.10(B)(18.1).

(y) Add subparagraph 1-201.10(B)(42.1) to read: "Integral" means that all equipment associated with a mobile unit must be rigidly and physically attached to the unit without restricting the mobility of the unit while in transit. This does not preclude the use of a barbecue unit in conjunction with a Class IV mobile food unit.

(z) Add subparagraph 1-201.10(B)(45.1) to read: "License" means the same as permit for the purposes of this rule.

(aa) Add subparagraph 1-201.10(B)(45.2) to read: "License holder" means the same as permit holder for the purposes of this rule.

(bb) Add subparagraph 1-201.10(B)(46.1) to read: "Maximum Contaminant Level (MCL)" means the maximum allowable level of a contaminant in water for consumption delivered to the users of a system, except in the case of turbidity where the maximum allowable level is measured at the point of entry to the distribution system.

(cc) Add subparagraph 1-201.10(B)(48.1) to read: "Mobile Food Unit" means any vehicle that is self-propelled or that can be pulled or pushed down a sidewalk, street, highway or waterway, on which food is prepared, processed or converted or which is used in selling and dispensing food to the ultimate consumer.

(dd) Add subparagraph 1-201.10(B)(49.1) to read: "Outdoor Barbecue" means an open-air preparation by a restaurant of food by cook-

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ing over an open fire utilizing either a permanent or portable grill, where the purpose of barbecuing is to impart a unique flavor to the food.

(ee) Add subparagraph 1-201.10(B)(63.1) to read: "Preparation" means the process whereby food is transformed into a consumable form. This includes, but is not limited to, slicing or dicing vegetables, grating cheese, portioning foods, slicing sandwiches, blending foods, or cooking or reheating foods.

(ff) Add subparagraph 1-201.10(B)(65.1) to read: "Quarterly Sampling" means a sample is taken and submitted according to the following schedule: 1st Quarter is January 1 through March 31, 2nd Quarter is April 1 through June 30, 3rd Quarter is July 1 through September 30 and the 4th Quarter is October 1 through December 31.

(gg) Add subparagraph 1-201.10(B)(65.2) to read: "Raw-to-Finish" means cooking foods that are potentially hazardous when in a raw state to a finished, edible state. This practice includes, but is not limited to, cooking raw hamburgers or barbecuing raw meats.

(hh) Add subparagraph 1-201.10(B)(66.1) to read: "Recheck Inspection" means:

(A) An inspection to determine whether specified corrections have been made or alternative procedures maintained for violations identified in previous inspections; or

(B) An inspection to determine whether specific corrections have been maintained for critical violations creating a significantly increased risk for foodborne illness. Recheck inspections may be conducted either on pre-announced dates or unannounced.

(ii) Add subparagraph 1-201.10(B)(69.1) to read: "Repeat violation" means a violation of a rule which is the same specific problem or process as indicated on the Food Service Inspection Report occurring in two consecutive semi-annual inspections.

(jj) Add subparagraph 1-201.10(B)(71.1) to read: "Sample" as it relates to ORS 624.010 means no more than a two to three ounce portion of a food or beverage.

(kk) Add subparagraph 1-201.10(B)(73.1) to read: "Semi-annual inspection" means an unannounced complete inspection conducted twice during the calendar year; one in each half of the year, but not less than 90 days or more than 270 days apart.

(ll) Amend subparagraph 1-201.10(B)(87) to read: "Temporary food establishment" means the same as ORS 624.010(6).

(mm) Add subparagraph 1-201.10(B)(87.1) to read "Transport Vehicle" means a vehicle used to transport foods or utensils from the base of operation to a mobile food unit.

(nn) Amend subparagraph 1-201.10(B)(89) to read: "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; food temperature measuring devices; trays used with high-chairs; and probe-type price or identification tags used in contact with food.

(oo) Add subparagraph 1-201.10(B)(90.1) to read: "Vehicle" means any device in, upon or by which any person or property is or may be transported or drawn upon a public highway, and includes vehicles that are propelled or powered by any means. This definition includes watercraft.

(pp) Add subparagraph 1-201.10(B)(92.1) to read: "Violation" means any condition which fails to meet a requirement of ORS Chapters 624 or this rule.

(qq) Add subparagraph 1-201.10(B)(92.2) to read: "Warehouse" means any place where food, utensils, single-service articles, cleaning or servicing supplies for vending machines, mobile units, or commissaries are stored.

(rr) Amend section 2-102.11 to read: Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the Hazard Analysis Critical Control Point principles, and the requirements of this Code. The person in charge shall demonstrate this knowledge by compliance with this Code, by being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program, a corporate training program approved by the Department of Human Services, or by responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:

(ss) Adopt paragraphs 2-102.11(A) through (O) without changes.

(tt) Amend paragraphs 2-201.12 (A) and (B) to read: The person in charge shall:

(A) Exclude a food employee from a food establishment if the food employee is diagnosed with an illness listed in OAR 333-019-0010.

(B) Restrict a food employee that has a symptoms caused by illness, infection, or other source that is:

(i) Associated with an acute gastrointestinal illness such as:

(I) Diarrhea,

(II) Fever,

(III) Vomiting,

(IV) Jaundice, or

(V) Sore throat with fever, or

(ii) A lesion containing pus such as a boil or infected wound that is open or draining and is:

(I) On the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover,

(II) On exposed portions of the arms, unless the lesion is protected by an impermeable cover, or

(III) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage;

(iii) The food employee is jaundiced.

(uu) Amend paragraphs 2-201.13 (A) and (B) to read: (A) The person in charge may remove an exclusion specified under paragraph 2-201.12(A) if:

(A) The person in charge obtains approval from the local public health authority; and

(B) The person excluded as specified under paragraph 2-201.12(A) provides to the person in charge written documentation that specifies that the excluded person may work in an unrestricted capacity in a food establishment because the person is free of the infectious agent of concern as specified in section 8-501.40.

(C) The person in charge may remove a restriction specified under: Subparagraph 2-201.12(B)(1) if the restricted person is free of the symptoms specified under paragraph 2-201.11(B).

(vv) Amend section 2-201.14 (A) and (B) to read: A food employee shall:

(A) Report to the person in charge if they have been diagnosed with an illness or are experiencing symptoms specified under section 2-201.12; and

(B) Comply with exclusions and restrictions specified under paragraphs 2-201.12.

(ww) Amend section 2-201.15 to read: The person in charge shall notify the regulatory authority that a food employee is diagnosed with an illness listed in OAR 333-019-0010.

(xx) Amend paragraph 2-301.12(A) to read: Except as specified in paragraph (B) of this section and section 2-301.13, food employees shall clean their hands in a lavatory that is equipped as specified under section 5-202.12 by using a cleaning procedure of approximately 20 seconds that includes:

(A) Vigorous friction on the surfaces of the lathered fingers, finger tips, areas between the fingers, hands and arms for at least 10 to 15 seconds, followed by;

(B) Thorough rinsing under clean, running water.

(yy) Amend section 2-301.13 to read:

(A) After defecating, contacting body fluids and discharges, or handling waste containing fecal matter, body fluids, or body discharges, and before beginning or returning to work, food employees shall wash their hands twice using the cleaning procedure specified in section 2-301.12.

(B) Except when one handwashing lavatory is allowed under paragraph 5-203.11(A), after using the toilet facility food employees shall wash their hands twice, first at a handwashing lavatory in the toilet facility and again at a handwashing lavatory in the food preparation area.

(zz) Amend section 2-301.16 to read:

(A) A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall be used according to labeled directions and be applied to hands that are cleaned as specified under section 2-301.12.

(B) A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100 mg/L chlorine.

(aaa) Amend paragraph 2-402.11(A) to read: Employees shall use effective hair restraints to prevent the contamination of food or food-contact surfaces.

(bbb) Amend paragraph 3-201.11(B) to read: Except as specified in paragraphs (I) and (J) of this section, food prepared in a private home may not be used or offered for human consumption in a food establishment.

(ccc) Add paragraph 3-201.11(G) to read: Game meat which has been donated to a charitable organization and has been inspected and processed as provided in ORS 619.095 may be served for human consumption by that charitable organization.

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(ddd) Add paragraph 3-201.11(H) to read: Except as required in 3-201.11(A) through (G) of this section and in accordance with ORS 624.035, any person, business or volunteer group may donate food to a benevolent organization that meets the requirements in ORS 624.015. The Internal Revenue Service (IRS) will issue a "letter of determination" that should be used as the basis for assessing compliance with benevolent status of ORS 624.015. The person, business or volunteer group making the donation shall inspect the food to ensure its fitness for human consumption and discard all food that is unwholesome. The following donated food items are approved for use by benevolent organizations:

(A) Commercially prepared foods, canned goods, and milk products, marine and freshwater fishery products or meat animals; i.e., cattle, sheep, goats, equine, swine, poultry or rabbits obtained from facilities licensed by the Oregon Department of Agriculture or the Department of Human Services according to ORS Chapters 603, 616, 621, 622, 624, 625 and 635;

(B) Home baked bread, rolls, pies, cakes, doughnuts or pastries not having perishable fillings, icings, toppings or glazes;

(C) Fresh fruit and produce from private gardens or commercial growers;

(D) Salvageable food which has lost the label or which has been subjected to possible damage due to accident, fire, flood, adverse weather or similar cause. Reconditioning of salvageable food shall be conducted according to the 1984 Model Food Salvage Code recommended by the Association of Food and Drug Officials and U.S. Department of Health and Human Services;

(E) Other food as may be approved by the Department of Human Services upon prior notification by the donator or benevolent organization;

(F) Unless alternative language has been approved by the regulatory authority, a notice shall be posted in public view that says: "NOTICE: Food served at this location may not have been inspected by the health department."

(eee) Add paragraph 3-201.11(I) to read: Privately donated breads, rolls, pies, cakes, doughnuts or other pastries not having perishable fillings, icings, toppings or glazes may be used in temporary food establishments operated by benevolent organizations for fund-raising events, provided they meet the requirements under 3-201.11(H)(6).

(fff) Add paragraph 3-201.11(J) to read: Food prepared in a private home that is licensed as a home processor by the Oregon Department of Agriculture.

(ggg) Add paragraph 3-201.11(K) to read: (K) A Benevolent Meal Site may serve food prepared by volunteers in an unlicensed kitchen under the following conditions:

(A)(i) Volunteers must obtain a food handler certificate as required in OAR 333-175. If the food is prepared by a group of people at the same location, only the person supervising the food preparation will be required to obtain a certificate. The person supervising the food preparation shall be at the preparation site at all times;

(ii) Volunteers that provide only non-potentially hazardous baked goods as allowed under paragraph (I) of this section or whole, uncut fresh fruits and vegetables are exempt from the food handler certification requirement.

(B)(i) The organization sponsoring the Benevolent Meal Site must obtain a signed statement from the volunteers that they have reviewed and will follow the requirements of this section. The signed statement must include the volunteer's name, contact information and the kinds of food donated;

(ii) The signed statement shall be maintained at the Benevolent Meal Site and be available for review.

(C) Food Preparation and Service:

(i) The following foods may not be provided: home-canned or home processed foods, wild mushrooms, wild game, shellfish, sport-caught fish, raw milk, raw animal foods, eggs from non-commercial sources, unpasteurized juices, and water and ice from unapproved water systems;

(ii) Except whole, uncut fresh fruit and vegetables and non-potentially hazardous baked goods as described under paragraph (I) of this section, leftover food prepared by volunteers must be returned to the volunteer or discarded.

(iii) Food obtained from licensed establishments may be donated to other facilities if the food is held under proper temperature control and protected from contamination during serving;

(iv) At least one portable handwashing facility as described in Section 5-203.11(C) shall be provided at the service location;

(v) Self-service of food is limited to prepackaged items and condiments dispensed in a sanitary manner;

(vi) A statement must be posted at the meal site in public view that states: "Notice: Food served at this location may not have been inspected by the health department."

(vii) Food must be stored, prepared, handled, transported and served in a manner that is consistent with the food safety requirements in these rules.

(hhh) Add subparagraph 3-201.17(A)(5) to read: Except as specified in (A)(1) through (4) of this section,

(A) Game meat donated to a charitable organization shall be inspected by employees of the Oregon Department of Agriculture, Department of Fish and Wildlife, or State Police as provided for in ORS 619.095 may be served for human consumption by that charitable organization.

(B) As used in subparagraph (a) of this section:

(i) Charitable organization means the State Office for Children, Adults and Families, Youth Authority, Department of Corrections institutions, low-income nutritional centers, public school nutritional centers, senior nutritional centers, state hospitals and other charitable organizations or public institutions approved by the Department of Fish and Wildlife.

(ii) Game meat includes antelope, bighorn sheep, deer, elk, moose and mountain goat.

(iii) Add section 3-201.18 to read: Outdoor Barbecuing.*

(C) Outdoor barbecuing by a food establishment shall be allowed as a part of the operation when conducted on the premise or in the immediate vicinity of the food establishment.

(D) Enclosure of an outdoor barbecue shall not be required unless necessary to protect food from contamination.

(E) If a handwashing sink is not adjacent to the outdoor barbecue, a handwashing system that meets the requirements of section 5-203.11(C)(1)-(6) must be provided next to the outdoor barbecue.

(jjj) Amend section 3-301.11 to read:

(A) Food employees shall wash their hands as specified under sections 2-301.12 and 2-301.13.

(B) Food employees shall minimize bare hand contact with food and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment.

(kkk) Amend paragraph 3-302.11(A) to read: Food shall be protected from cross contamination by:

(A) Separating raw animal foods during storage, preparation, holding, and display from:

(i) Raw ready-to-eat food including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as vegetables,

(ii) Cooked ready-to-eat food, and

(iii) Raw ready-to-eat food shall be stored separately from ready-to-eat food;

(B) Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:

(i) Using separate equipment for each type, or

(ii) Arranging each type of food in equipment so that cross contamination of one type with another is prevented, and

(iii) Preparing each type of food at different times or in separate areas,

(iv) If stored vertically, raw animal foods must be stored in ascending order of cooking temperature as specified in section 3-401.11, with the highest required cooking temperature stored at the lowest level;

(lll) Amend paragraph 3-304.12(F) to read: In a container of water if the container is cleaned at a frequency specified under subparagraph 4-602.11(D)(7); and

(A) The water is maintained at a temperature of 60 degrees C (140 degrees F) or above; or

(B) At 5 degrees C (41 degrees F) or less.

(mmm) Add paragraph 3-304.15(E) to read: Effective March 1, 2003, the use of latex gloves in food service establishments is prohibited.

(nnn) Add section 3-306.15 to read: Outdoor Barbecue, Serving Consumers.

(A) Consumers may not serve themselves from an outdoor barbecue.

(B) The food employee may serve:

(i) An employee who brings a container or plate from the food establishment to the barbecue and who returns the food to the food establishment for further processing or service; or

(ii) The consumer directly.

(C) Except for non-potentially hazardous condiments, such as hot sauces, ketchup, mayonnaise, mustard, pepper, relish, salt, and sugar, no other food may be served outside of the food establishment.

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(ooo) Add section 3-307.12 to read: Protection from Contamination, Use of Private Vehicles for Food Deliveries.

(A) Private vehicles may be used for food deliveries if the food is packaged so that it is protected from contamination under Part 3-3, and adequate means are provided for maintaining proper food temperatures under section 3-501.16.

(B) Private vehicles shall not be used in any activity that is incompatible with safe and sanitary transportation of food.

(ppp) Amend subparagraph 3-401.11(D)(2) to read: The consumer requests that the food be prepared in a raw, rare, or undercooked state.

(qqq) Amend paragraph 3-402.11(B) to read: If the fish are tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern), or are listed in the FDA Fish and Fisheries Products Hazards and Control Guidance, Potential Species-Related & Process Related Hazards and parasites are not a hazard, the fish may be served or sold in a raw, raw-marinated, or partially cooked ready-to-eat form without freezing as specified under paragraph (A) of this section.

(rrr) Amend section 3-402.12 to read: (A) Except as specified in paragraphs 3-402.11(B) and (B) of this section, if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall identify each batch by name and date, measure the freezing temperature once per day, and record the temperature and time to which the fish are subjected and shall retain the records at the food establishment in chronological order for 90 calendar days beyond the time of service or sale of the fish.

(B) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under section 3-402.11 may substitute for the records specified under paragraph (A) of this section.

(i) Each invoice received from the supplier shall state the specific fish by species that have been frozen to meet the requirements for parasite destruction specified under section 3-402.11.

(ii) The written agreement or statement from the supplier must be updated at least once per year.

(sss) Amend paragraph 3-501.14(A) to read: Cooked potentially hazardous food shall be actively cooled:

(A) Within 2 hours, from 60 degrees C (140 degrees F) to 21 degrees C (70 degrees F); and

(B) Within 4 hours, from 21 degrees C (70 degrees F) to 5 degrees C (41 degrees F) or less, or to 7 degrees C (45 degrees F) as specified under paragraph 3-501.16(C).

(ttt) Amend subparagraph 3-501.16(C)(2) to read: No later than January 1, 2007, the equipment is upgraded or replaced to maintain food at a temperature of 5 degrees C (41 degrees F) or less.

(uuu) Add subparagraph 3-501.16(C)(3) to read: (3) Mobile food units must upgrade or replace equipment to maintain food at a temperature of 5 degrees C (41 degrees F) or less no later than January 1, 2008.

(vvv) Amend subparagraph 3-501.17(A) to read: (A) Except as specified in paragraph (E) of this section, refrigerated, ready-to-eat, potentially hazardous food prepared and held refrigerated for more than 24 hours in a food establishment shall be clearly marked at the time of preparation with the preparation date or the date by which the food shall be consumed which is, including the day of preparation:

(A) 7 calendar days or less from the day that the food is prepared, if the food is maintained at 5 degrees C (41 degrees F) or less; or

(B) 4 calendar days or less from the day the food is prepared, if the food is maintained at 7 degrees C (45 degrees F) or less as specified under paragraph 3-501.16(C).

(www) Amend paragraph 3-501.17(F) to read: Paragraphs (C) and (D) of this section do not apply to:

(A) Whole, unsliced portions of a cured and processed product with original casing maintained on the remaining portion, such as bologna, salami, or other sausage in a cellulose casing;

(B) Hard cheeses that are manufactured with a moisture content not exceeding 39 percent as specified under 21 CFR 133.150 and meets the temperature requirements specified under paragraph 3-501.16(B). Examples include Asiago medium, Asiago old, Cheddar, Gruyere, Parmesan, Reggiano, Romano, and Sap sago.

(C) Semisoft cheeses containing more than 39 percent but less than 50 percent moisture as specified in 21 CFR 133.187 and meets the temperature requirements specified under paragraph 3-501.16(B). Examples include Asiago fresh and Soft, Blue, Brick, Caciocavallo Siciliano, Colby with not more than 40 percent moisture, Edam, Gorgonzola, Gouda, Limburger,

Monterey, Monterey Jack, Muenster, Pasteurized process cheese, Provolone, Swiss and Emmentaler.

(D) Pasteurized process cheese manufactured according to 21 CFR 133.169, labeled as containing an acidifying agent and meets the temperature requirements specified under paragraph 3-501.16(B).

(E) Cheeses that are not exempt for date marking include soft cheeses. Examples include Brie, Camembert, Cottage, Ricotta, and Teleme.

(xxx) Add section 3-502.11 to read: A food establishment shall obtain a variance from the regulatory authority as specified in section 8-103.10 and under section 8-103.11 before smoking food as a method of food preservation rather than as a method of flavor enhancement; curing food; using food additives or adding components such as vinegar as a method of food preservation rather than as a method of flavor enhancement or to render a food so that it is not potentially hazardous; packaging food using a reduced oxygen packaging method except if required under section 3-502.12; custom processing animals that are for personal use as food and not for sale or service in a food establishment; or preparing food by another method that is determined by the regulatory authority to require a variance.

(yyy) Amend section 3-502.12 to read: (A) A food establishment that packages food using a reduced oxygen packaging method and *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form shall have a HACCP plan that contains the information specified under paragraph 8-201.14(D) and that:

(A) Limits the food packaged to a food that does not support the growth of *Clostridium botulinum* because it complies with one of the following:

(i) Has a water activity of 0.91 or less,

(ii) Has a pH of 4.6 or less,

(iii) Is a meat or poultry product cured at a food processing plant regulated by the U.S.D.A. using substances specified in 9 CFR 318.7 Approval of substances for use in the preparation of products and 9 CFR 381.147 Restrictions on the use of substances in poultry products and is received in an intact package, or

(iv) Is a food with a high level of competing organisms such as raw meat or raw poultry;

(v) Is a food that has been subjected to a process or control that can be supported by scientific data and is approved the Department of Human Services.

(B) Specifies methods for maintaining food at 5 degrees C (41 degrees F) or below;

(C) Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

(i) Maintain the food at 5 degrees C (41 degrees F) or below, and

(ii) Discard the food if within 14 calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;

(D) Limits the shelf life to no more than 14 calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, whichever occurs first;

(i) Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.

(ii) The Department of Human Services may require the permit holder to obtain a variance as specified in section 8-103.10 and under section 8-103.11 to produce products with reduced oxygen packaging.

(zzz) Amend section 3-603.11 to read: Except as specified in paragraphs 3-401.11(C) and 3-801.11(D), the food establishment may offer or a consumer may request an animal food such as beef, eggs, fish, lamb or shellfish to be served in a ready-to-eat form that is raw, undercooked, or not otherwise processed to eliminate pathogens; or as a raw ingredient in another ready-to-eat food.

(aaaa) Amend paragraph 4-101.19(A) to read: (A) Except as specified in paragraphs (B), (C), (D) and (E) of this section, wood and wood wicker may not be used as a food-contact surface.

(bbbb) Add paragraph 4-101.19(E) to read: Untreated wood planks, such as cedar, may be used as a cooking surface for grilling or baking.

(cccc) Amend paragraph 4-301.12 (A) to read: Except as specified in paragraphs (C) and (F) of this section, a sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils.

(dddd) Add paragraphs 4-301.12 (F) and (G) to read: (F) A commercial warewashing machine is allowed in lieu of a manual warewashing sink as required in this section.

(A) For mobile food units:

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(i) Class I, II and III mobile food units are not required to provide warewashing facilities on the unit, if adequate facilities exist at the commissary.

(ii) Multiple or disposable utensils may be used for food handling on the unit. There shall be at the beginning of each day's business a sufficient supply of clean utensils necessary to properly prepare, assemble, or dispense the food. For mobile food units that do not have a warewashing sink on the unit, this supply shall consist of at least one of each type of utensil for every two hours of operation. If the unit operates less than four hours in a day, the unit shall provide a minimum of two sets of each type of utensil. Utensils shall not be used if they become contaminated.

(iii) Class IV mobile food units must provide a sink with at least three compartments.

(eeee) Amend section 4-302.12 to read: Food temperature measuring devices shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified under Chapter 3. At a minimum, a metal-stemmed temperature measuring device with a range of 0-220 degrees F shall be provided to take internal food temperatures.

(ffff) Amend paragraph 4-501.16(B) to read:

(A) If a warewashing sink is used to launder wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under section 4-501.14.

(i) If wiping cloths are washed at the warewashing sink, they shall be washed in the wash compartment, and

(ii) Sinks used to wash or thaw food shall be washed, rinsed, and sanitized both before and after use.

(gggg) Amend subparagraph 4-602.11(D)(7) to read: The utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues and in-use utensils are intermittently stored in a container of water in which the water is maintained at:

(A) 60 degrees C (140 degrees F) or more, or

(B) 5 degrees C (41 degrees F) or less.

(hhh) Amend section 5-102.11 to read:

(i) Except as specified under section 5-102.12, water from a public water system shall meet 40 CFR 141-National Primary Drinking Water Regulations and OAR 333-061.

(ii) The following drinking water standards apply to licensed food establishments that are not regulated under OAR 333-061.:

(5) Sampling frequency:

(a) For seasonal facilities, a coliform sample must be taken prior to operational period and each quarterly sampling period while open to public. A minimum of two samples will be required for coliform, regardless of length of operation.

(b) For year round facilities:

(A) Coliform: Monthly for surface water. Quarterly for populations under 1000 on ground water.

(B) Inorganic Samples: One time sampling required for new facilities before beginning operation.

(6) Maximum Contaminant Level (MCL) Violations: An item is not considered a violation until confirmed by second sample taken within 24 hours. Four repeat samples must be taken within 24 hours of the original positive sample for a sample result above the MCL.

(a) Total coliform: Report positive total coliform samples to the Department within 24 hours of being notified of the positive sample.

(b) Fecal coliform: Any positive fecal coliform sample must be reported to the Department within 24 hours.

(A) Public notification for this potential acute health risk is required.

(B) An alternative procedure approved by the Department must be in place before serving public.

(c) Inorganic Samples: One time sampling required for new facilities. Not required for facilities that were previously regulated under OAR 333-061 and have tested prior to January 1, 2003. Inorganics include: antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium and thallium.

(d) Nitrate: Sample annually

(A) Any samples exceeding the MCL for nitrate shall be reported to the Department within at least 24 hours.

(B) Public notification is required.

(C) Bottled water must be provided to public upon request.

(e) The Department may require more frequent monitoring than specified or may require confirmation samples for positive and negative results. It is the responsibility of the operator to correct any problems and get a laboratory test result that is less than the MCL.

(7) Sample collection methods:

(a) For the purpose of determining compliance with the MCL and the sampling requirements of these rules, sampling results may be considered only if they have been analyzed by a laboratory certified by the State Drinking Water Program.

(b) Samples submitted to laboratories for analysis shall be clearly identified with the name of the water system, facility license number, sampling date, time, sample location identifying the sample tap, the name of the person collecting the sample and whether it is a routine or a repeat sample.

(A) Routine: These are samples collected from established sampling locations within a water system at specified frequencies to satisfy monitoring requirements as prescribed in this rule. These samples are also used to calculate compliance with maximum contaminant levels for inorganics prescribed in OAR 333-061-0030(Table 1);

(B) Repeat: These are samples collected as a follow-up to a routine sample that has exceeded a MCL;

(C) Test results: Sample results must be submitted to the Local Regulatory Authority by the 10th of the month following the sampling period.

(c) The Department may take additional samples to determine compliance with applicable requirements of these rules.

(8) Public Notice: All public notification must be posted conspicuously on site and must include:

(a) A description of the violation or situation of concern;

(b) Corrective actions taken to improve water quality;

(c) Any potential adverse health effects;

(d) The population at risk;

(e) The alternative measures in place to provide safe drinking water.

(9) Surface Water Sources: New facilities with surface water sources not regulated under OAR 333-061 will not be licensable after January 1, 2005. Facilities existing prior to January 1, 2005 in compliance with OAR 333-061-0032 may continue to operate.

(10) Plan Review: All new facilities that are not regulated by OAR 333-061 must submit plans to the Department for review prior to construction or major modification of system. Systems regulated prior to January 1, 2003 by OAR 333-061 are not required to re-submit plans. Plan review must be conducted in accordance with the procedures outlined in OAR 333-061-0060.

(a) Amend paragraph 5-103.11(B) to read: Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment. Hot and cold or tempered water must be provided at all handwashing sinks in the establishment.

(b) Amend section 5-104.12 to read:

(A) Water meeting the requirements specified under Subparts 5-101, 5-102, and 5-103 shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

(i) A supply of containers of commercially bottled drinking water;

(ii) One or more closed portable water containers;

(iii) An enclosed vehicular water tank;

(vi) An on-premises water storage tank; or

(v) Piping, tubing, or hoses connected to an adjacent approved source.

(B) The regulatory authority may grant a temporary variance from requirements of Subparts 5-101, 5-102, and 5-103 by continuing or re-issuing previously issued permits where:

(i) Failure to comply with the code requirements is due to a failure of a community, municipal or public utility water supply system to meet the regulatory authority's requirements;

(ii) The regulatory authority is satisfied that necessary remedial action is ongoing or reasonably imminent in connection with such water supply system; and

(iii) Continuance or re-issuance of the permit is conditional upon the carrying out of such remedial action and the provision of such other measures by the certificate or license holder which will in the judgment of the regulatory authority afford reasonable interim protection to the public health including, but not limited to, adequate warnings to public and personnel as to the safety of the water delivered to the premises from the distribution system and notice of measures to avoid use or consumption of such water or to render it safe for consumption; adequate warnings as to the need for supervision of children and others needing supervision against use of such water; provision of alternative potable water and adequate notification as to its availability; and measures to avoid the use and the availability of water on the premises.

(c) Amend paragraph 5-203.11(A) to read: Except as specified in (B) and (C) of this section, at least one handwashing lavatory or the number of handwashing lavatories necessary for their convenient use by employees in

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areas specified under section 5-204.11 shall be provided. Food establishments opened prior to July 1, 1965 are exempt from this requirement provided that employees can meet the requirements under sections 2-301.12 and 2-301.13.

(d) Amend paragraph 5-203.11(C) to read: An adequate number of handwashing stations shall be provided for each temporary food establishment to include:

(A) A minimum of one enclosed container that has a minimum water capacity of five gallons;

(B) A spigot that can be opened to provide a constant flow of water;

(C) Soap;

(D) Water;

(E) Paper towels; and

(F) A collection container for wastewater with a minimum capacity of five gallons.

(e) Add paragraph 5-203.11(D) and (E) to read: (D) For mobile food units:

(A) Class II, III and IV mobile food units must provide hot and cold running water for handwashing tempered by means of a mixing valve;

(B) Notwithstanding subparagraph (1) of this paragraph, Class II and III mobile food units may provide a handwashing system as described in ¶ (C) (1)-(6) of this section. There must be a minimum initial volume of five gallons of water available for handwashing at the beginning of the workday.

(E) For outdoor barbecues, if a handwashing sink is not adjacent to the barbecue, a handwashing system that meets the requirements of (C)(1)-(6) of this section must be provided next to the outdoor barbecue.

(f) Amend section 5-203.12 to read:

(A) Except as specified in (B) of this section, toilet facilities shall be installed according to ORS 455.010 through 455.895 (1998 Oregon Structure Specialty Code, 2000 Amendments) for the number of toilets.

(B) Food establishments with occupancy of 15 or less to include both employees and patrons may have only one toilet fixture and adjacent lavatory on the premises.

(C) Mobile food units shall provide toilet facilities as provided for in § 6-402.11.

(g) Amend section 5-203.13 to read:

(A) At least one service sink or one curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

(B) For mobile food units, if wet mopping is used as a method for cleaning the floor, then a separate sink must be provided in the unit for cleaning mops and cleaning tools and for the disposal of mop water or similar liquid wastes.

(h) Amend section 5-205.11 to read: Using a Handwashing Facility.

(A) A handwashing facility shall be maintained so that it is accessible at all times for employee use.

(B) A handwashing facility may not be used for purposes other than handwashing.

(C) An automatic handwashing facility shall be used in accordance with manufacturer's instructions.

(i) Amend section 5-302.16 to read: A food grade hose shall be used for conveying drinking water from a water tank and shall be:

(j) Adopt paragraphs 5-302.16(A) through (E) as written.

(k) Add section 5-305.11 to read: Water System Requirements

(A) A Class IV mobile food unit must have a potable water system under pressure. The system must be of sufficient capacity to furnish enough hot and cold water for food preparation, warewashing, and handwashing, and the requirements of these rules. This supply must consist of a minimum of five gallons of water for handwashing and 30 gallons of water for warewashing.

(B) Class II and III mobile food units must have a water supply that provides sufficient water for food preparation, handwashing, warewashing or any other requirements as set forth in these rules. If warewashing is conducted on the unit, a minimum of 30 gallons of water must be dedicated for this purpose. A minimum of five gallons of water must be provided for handwashing.

(C) Except relating to handwashing as provided for in subparagraph 5-203.11(D)(2), all mobile food units must be designed with integral potable and waste water tanks on board the unit. A mobile unit may connect to water and sewer if it is available at the operating location, however, the tanks must remain on the unit at all times.

(l) Amend paragraph 5-401.11(A) to read: Sized 10 to 15 percent larger in capacity than the water supply tank; and

(m) Add paragraph 5-401.11(C) to read: For a mobile food unit selling only beverages, such as coffee, espresso, or soda, and where most of the potable water supply is used in the product, the waste water retention tank may be at least one half the volume of the potable water storage tank. This determination must be made by the regulatory authority.

(n) Amend section 5-402.13 to read: (A) Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law.

(B) For mobile food units:

(i) Mobile food units that generate only gray water liquid wastes may hand-carry those wastes to a specific disposal location approved by the regulatory authority.

(ii) The waste transport container must be designed and intended to hold and transport gray water without leaks or spills. The container must have a capacity no greater than 20 gallons.

(o) Amend section 6-202.19 to read: Exterior walking and driving surfaces shall be graded to drain if required by law and shall be maintained to prevent the accumulation of water.

(p) Amend section 6-202.110 to read: Outdoor Refuse Areas, Drainage. Outdoor refuse areas shall be constructed in accordance with law and shall be designed and maintained to prevent the accumulation of liquid waste that results from the refuse and from cleaning the area and waste receptacles.

(q) Amend section 6-301.11 to read: Handwashing Cleanser, Availability. Each handwashing lavatory or group of two adjacent lavatories shall be provided with a supply of hand cleaning liquid, powder, or bar soap.

(r) Amend section 6-301.12 to read: Hand Drying Provision. Each handwashing lavatory or group of adjacent lavatories shall be provided with:

(A) Individual, disposable towels;

(B) A continuous towel system that supplies the user with a clean towel; or

(C) A heated-air hand drying device.

(s) Amend section 6-402.11 to read:

(A) Except for paragraphs (B), (C) (D) and (E) of this section, toilet rooms shall be conveniently located and accessible to employees during all hours of operation and shall be an integral part of the building.

(B) A food service establishment may be approved without an integral toilet room under the following conditions:

(i) An integral toilet room is not required by law; and

(ii) A toilet room is located within 500 feet of the food establishment; and

(iii) A written agreement is in place that allows the use of the toilet room; or

(iv) The food service establishment is located in an outdoor mall or shopping center.

(C) Toilet facilities for the customer are required only in establishments constructed or extensively remodeled after May 11, 1974.

(D) Food establishments limited to drive-in or handout service are not required to provide toilet room facilities for the customer.

(E) For mobile food units:

(i) On board toilet facilities are not applicable to most mobile food units. If the unit is not so equipped, then the mobile food unit must operate within one-quarter mile or a five-minute walk of an accessible restroom facility. Mobile food units that operate on a designated route, and which do not stop at a fixed location for more than two hours during the workday, shall be exempt from this rule.

(ii) Mobile food units that do not provide on board restroom facilities under subparagraph (1) of this rule must have restroom facilities that will be accessible to employees during all hours of operation. The restroom facilities must have a handwashing system that provides potable hot and cold running water and meets the requirements of OAR 333-150-0000 sections 6-301.11, 6-301.12, 6-301.20 and 6-302.11. Employees may use a restroom located in a private home or a portable toilet to satisfy this requirement.

(t) Add paragraph 8-101.10(C) to read: Plans submitted shall be reviewed and commented on by a sanitarian registered in accordance with ORS 700.

(u) Amend section 8-103.10 to read:

(A) The Department may grant a variance from requirements of this Code as follows:

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(i) Where it is demonstrated to the satisfaction of the Department that strict compliance with the rule would be highly burdensome or impractical due to special condition or cause;

(ii) Where the public or private interest in the granting of the variance is found by the Department to clearly outweigh the interest of the application of uniform rules; and

(iii) Where such alternative measures are provided which in the opinion of the Department will provide adequate public health and safety protection.

(B) Such variance authority is not conferred upon any Local Public Health Authority notwithstanding contractual authority in administration and enforcement of the food service statutes and rules;

(C) The applicant must include all necessary information to support the variance request, which may include, but is not limited to, required testing, challenge data and research results;

(D) If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment;

(E) The Department will review variances at least triennially;

(F) Revocation or denial of the variance request shall be subject to the appeal process provided under ORS 183.

(v) Amend subparagraph 8-201.13(A)(2) to read: A variance is required as specified under section 3-502.11, paragraph 4-204.110(B), or subparagraph 3-203.12(B)(2)(b); or

(w) Amend paragraph 8-302.14(A) to read: The name, mailing address, telephone, number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;

(x) Amend paragraph 8-303.30(C) to read: Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided under ORS 183.

(y) Amend subparagraph 8-304.11(G)(2) to read: The regulatory authority directs the replacement to meet current code requirements after the food establishment has been closed for a minimum of 12 consecutive months, or

(z) Amend paragraph 8-304.11(H) to read: Upgrade or replace refrigeration equipment if the circumstances under subparagraphs (G)(1)-(3) of this section occurs first, or by no later than the time specified under paragraph 3-501.16(C);

(aa) Amend paragraph 8-304.11(J) to read: Accept notices issued and served by the regulatory authority as may be authorized under ORS 183 and 624; and

(bb) Amend paragraph 8-304.11(K) to read: Be subject to the administrative, civil, injunctive, and criminal remedies as may be authorized under ORS 183 and 624.

(cc) Amend paragraph 8-401.10(C) to read: For temporary food establishments:

(A) Except for Subparagraph (C)(2) of this section, the regulatory authority shall inspect at least once during the operation of a temporary food establishment.

(B) For benevolent temporary food establishments, the regulatory authority shall either:

(i) Inspect; or

(ii) Provide a consultation.

(dd) Amend paragraph 8-403.10(A) to read: (A) Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under 8-302.14(C), inspection date, and employee food safety cards; and

(ee) Amend section 8-403.20 to read: The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified under sections 8-404.11, and 8-405.11.

(ff) Amend paragraph 8-405.11(B) to read: Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame, not to exceed 14 calendar days after the inspection, for the permit holder to correct critical Code violations or HACCP plan deviations.

(gg) Amend paragraph 8-501.20(C) to read: (C) Closing the food establishment by summarily suspending a permit to operate as may be provided under ORS 624.

(hh) Amend paragraph 8-501.30(C) to read: (C) States that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided under ORS 183.

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

Stat. Auth.: ORS 624.100, 624.390

Stats. Implemented: ORS 624.100, 624.390

Hist.: HD 20-1986, f. 12-22-86, ef. 2-2-87; HD 6-1989, f. 9-6-89, cert. ef. 9-7-89; HD 10-1992, f. 10-2-92, cert. ef. 10-5-92; HD 19-1994, f. & cert. ef. 7-1-94; HD 16-1995, f. 12-28-

95, cert. ef. 1-1-96; OHD 24-2001, f. 10-31-01, cert. ef. 1-1-02; OHD 11-2002, f. & cert. ef. 8-7-02; PH 5-2004(Temp), f. & cert. ef. 2-13-04 thru 7-30-04; PH 15-2004, f. & cert. ef. 4-9-04; PH 1-2005, f. & cert. ef. 1-14-05; PH 14-2006, f. 6-27-06, cert. ef. 7-1-06; PH 3-2008, f. & cert. ef. 3-5-08

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Rule Caption: Emergency Contraception

Adm. Order No.: PH 4-2008

Filed with Sec. of State: 3-7-2008

Certified to be Effective: 3-7-08

Notice Publication Date: 2-1-2008

Rules Adopted: 333-520-0073

Subject: The Oregon Department of Human Services, Public Health Division is adopting OAR 333-520-0073 in accordance with Oregon 2007 Laws, Chapter 182. It requires general hospitals to provide female assault victims medically factual information about, and the option for emergency contraception. The Department shall respond to complaints of violations and may impose civil penalties for non-compliance.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-520-0073

Emergency Contraception

(1) A hospital providing care to a female victim of sexual assault shall:

(a) Promptly provide the victim with unbiased, medically and factually accurate written and oral information about emergency contraception, approved by the Department of Human Services (DHS);

(b) Promptly orally inform the victim of her option to be provided emergency contraception at the hospital; and

(c) If requested by the victim and not medically contraindicated, provide the victim of any child bearing age with emergency contraception immediately at the hospital, notwithstanding section 2, chapter 789, Oregon Laws 2003 (defining the availability of the Sexual Assault Victims' Emergency Medical Response fund "SAVE Fund").

(d) For purposes of this rule, "emergency contraception" means the use of a drug or device that is approved by the United States Food and Drug Administration to prevent pregnancy after sexual intercourse.

(2) A hospital shall post a written notice, approved by DHS, to inform victims of their right to be provided emergency contraception at the hospital;

(3) Pursuant to ORS 109.640, anyone under the age of 18 has the right to consent to birth control information and services, including emergency contraception.

(4) A hospital shall document, in writing, that the information required to be given to a female victim of sexual assault in section (2) of this rule, was provided. Failure to have such documentation may result in the issuance of a civil penalty.

(5) A hospital may only provide the victim informational materials about emergency contraception that has been approved by DHS.

(6) DHS shall investigate complaints of violations of section 2 of this rule in accordance with ORS 441.057.

(7) In addition to investigating complaints, DHS shall monitor compliance with Oregon Laws 2007, Chapter 182, § 5 and this rule during scheduled visits to hospitals.

(8) DHS may impose a civil penalty, not to exceed \$1000, against a hospital for each violation of Oregon Laws 2007, Chapter 182, § 5 and these rules. In addition to the assessment of a civil penalty, DHS will require corrective actions from the hospital.

(a) For the first violation the civil penalty shall be \$250;

(b) For the second violation the civil penalty shall be \$500;

(c) For the third and any subsequent violations, the civil penalty shall be \$1000.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 183.745, 441.055, 750.055 & 750.333

Hist.: PH 4-2008, f. & cert. ef. 3-7-08

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Rule Caption: Registration of organ procurement organizations.

Adm. Order No.: PH 5-2008

Filed with Sec. of State: 3-7-2008

Certified to be Effective: 7-1-08

Notice Publication Date: 2-1-2008

Rules Adopted: 333-080-0040, 333-080-0050

Rules Amended: 333-520-0110

ADMINISTRATIVE RULES

Subject: The Oregon Department of Human Services, Public Health Division is adopting rules in accordance with Oregon Laws 2007, Chapter 334 (ef. July 1, 2008), to register organ procurement organizations, tissue banks and eye banks. DHS has authority to impose civil penalties for non-compliance.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-080-0040

Definitions

(1) As used in this section of Oregon Administrative Rules:

(a) "Entity" means an individual, corporation, business trust, partnership, limited liability company, association, joint venture or an instrumentality of an entity.

(b) "Eye bank" means an entity that is licensed or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage or distribution of human eyes or parts of human eyes.

(c) "Health care facility" has the meaning given that term in ORS 442.015.

(d) "Organ procurement organization" means an entity designated by the United States Secretary of Health and Human Services as an organ procurement organization.

(e) "Tissue bank" means an entity that is licensed or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage or distribution of tissue for transplants.

(2) Tissue banks and eye banks must be registered with and regulated by the United States Food and Drug Administration.

(3) A health care facility that performs organ transplants must:

(a) Be a member of the Organ Procurement and Transplantation Network established by the National Organ Transplant Act of 1984;

(b) Be regulated by the United States Department of Health and Human Services; and

(c) Use an organ procurement organization to obtain organs for transplants.

(4) A health care facility that performs tissue or corneal transplants must obtain the tissue or corneas from a tissue bank or an eye bank that is registered with and regulated by the United States Food and Drug Administration.

Stat. Authority: ORS 441.015

Stats. Implemented: ORS 183.745, ORS 441.015, ORS 441.079, ORS 441.082

Hist.: PH 5-2008, f. 3-7-08, cert. ef. 7-1-08

333-080-0050

Registration and Civil Penalties

(1) An organ procurement organization, tissue bank or eye bank may not do business in Oregon unless it has registered with the Department of Human Services. Registration with the Department must be completed within 30 days after the implementation of these rules on July 1, 2008.

(a) The Department shall develop a registration form and the transplant organizations shall, at least 30 days prior to implementation, obtain and mail the required form to the Department.

(2) Each organ procurement organization, tissue bank and eye bank shall provide to the Department, at least every three years, current documentation of designation, certification and inspection as evidence of compliance with national standards and requirements under federal law.

(3) The Department may impose a civil penalty not to exceed \$1,000 against an organ procurement organization, tissue bank or eye bank doing business in this state for failure to:

(a) Register with the Department;

(b) Report loss of designation, accreditation or certification within 60 days of the loss; or

(c) Supply the Department with requested current documentation of designation, certification and inspection.

(d) For the first violation the civil penalty shall be \$250;

(e) For the second violation the civil penalty shall be \$500;

(f) For the third and any subsequent violations, the civil penalty shall be \$1000.

(4) Civil penalties under this section shall be imposed in the manner provided under ORS 183.745.

Stat. Authority: ORS 441.015

Stat. Implemented: ORS 183.745, ORS 441.015, ORS 441.079, ORS 441.082

Hist.: PH 5-2008, f. 3-7-08, cert. ef. 7-1-08

333-520-0110

Hospital Compliance

(1) Hospitals shall demonstrate compliance by maintaining a file available for Health Division review, including the following:

(a) Training curriculum;

(b) Hospital policy and procedure regarding request and training for tissues, eyes, and organs;

(c) If not included in policy and procedure, criteria for selection of requestor; and

(d) Method by which 24-hour scheduling of requestor(s) is established.

(e) Policies and procedures for communicating with procurement organizations regarding the availability of donor organs, tissues, and eyes.

(2) Hospitals may provide appropriate procurement organization personnel access to medical records of decedents on a periodic basis. The timing of this review will be mutually agreed to by both the hospital and procurement organizations. Procurement organizations will provide appropriate staff to conduct the review in the hospital. The purpose of this review will be to provide information to the hospital to assist in compliance with state and federal regulations related to organ, tissue and eye donation. If the hospital agrees to the review, all findings will remain strictly confidential.

(3) In the case of a hospital in which organ transplants are performed, the hospital must be a member of the Organ Procurement and Transplantation network established under Section 372 of the Public Health Service Act and abide by its rules and requirements.

(4) In the case of a hospital in which organ transplants are performed, the hospital must also comply with the requirements of OAR Division 80.

Stat. Auth.: ORS 441.015

Stats. Implemented: ORS 183.745, 441.015, 441.079 & 441.082

Hist.: HD 2-1986, f. & ef. 1-14-86; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89; Renumbered from 333-072-0110; HD 21-1993, f. & cert. ef. 10-28-93; HD 2-2000, f. & cert. ef. 2-15-00; PH 5-2008, f. 3-7-08, cert. ef. 7-1-08

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

Rule Caption: Medicaid Nursing Facilities.

Adm. Order No.: SPD 2-2008

Filed with Sec. of State: 2-29-2008

Certified to be Effective: 3-1-08

Notice Publication Date: 2-1-2008

Rules Amended: 411-070-0005, 411-070-0027, 411-070-0035, 411-070-0045, 411-070-0085, 411-070-0091, 411-070-0095, 411-070-0359, 411-070-0442, 411-070-0452, 411-070-0465

Rules Repealed: 411-070-0428, 411-070-0462, 411-070-0005(T), 411-070-0027(T), 411-070-0035(T), 411-070-0085(T), 411-070-0091(T), 411-070-0095(T), 411-070-0359(T), 411-070-0442(T), 411-070-0452(T), 411-070-0465(T)

Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is permanently:

Amending OAR 411-070-0005 to clarify terms used throughout the rule to make them consistent.

Amending OAR 411-070-0027 to reflect existing policy and procedure related to authorization of the complex medical add-on payment and to remove language pertaining to Pre-Admission Screening authorizing initial level as this practice has been discontinued. Pre-Admission Screening continues to authorize service eligibility for Medicaid-funded nursing facility services as stated in OAR 411-070-0040(2)(a)(B) (Client Screening, Assessment and Review);

Amending OAR 411-070-0035 to reflect existing policy and procedure related to notification by the facility and authorization by SPD of the complex medical add-on payment;

Amending OAR 411-070-0045 to move language from OAR 411-070-0027 (Complex Medical Add-On Payment Authorization) pertaining to prior authorization, nursing facility responsibility to confirm Medicaid eligibility and collect resident liability payment, and reduced payment for abuse;

Amending OAR 411-070-0085 to update and clarify the goods and services that are considered to be part of the Medicaid nursing facility daily rate;

Amending OAR 411-070-0091 to reflect existing policy and procedure related to resident needs that qualify for the complex medical add-on payment;

Amending OAR 411-070-0095 to define the term reasonable access;

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Amending OAR 411-070-0359 to update and clarify treatment of third party payors;

Repealing OAR 411-070-0428 as allowable costs are no longer divided into two categories and the rule is obsolete;

Amending OAR 411-070-0452 to clarify the pediatric rate calculation;

Repealing OAR 411-070-0462 since the payment referenced in this rule is obsolete; and

Amending OAR 411-070-0465 to update the chart of accounts for Nursing Facility Financial Statements (NFFS) filed for the year ending June 30, 2007 and thereafter by creating, deleting, renaming and redefining accounts.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-070-0005

Definitions

As used in OAR chapter 411, division 070, the definitions in OAR 411-085-0005 and the following definitions apply:

(1) "Accrual Method of Accounting" means a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(2) "Active Treatment" means the implementation of an individualized care plan developed under and supervised by a physician and other qualified mental health professionals that prescribes specific therapies and activities.

(3) "Activities of Daily Living" means activities usually performed in the course of a normal day in an individual's life such as eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition/behavior.

(4) "Alternative Services" means individuals or organizations offering services to persons living in a community other than a nursing facility or hospital.

(5) "AMHD" means the Department of Human Services, Addictions and Mental Health Division

(6) "Area Agency on Aging (AAA)" means an established public agency designated under the Older Americans Act, 42 USC 3025, and which has a responsibility for local administration of senior and disability programs as described in ORS Chapter 410.

(7) "Basic Flat Rate Payment" and "Basic Rate" mean the statewide standard payment rate for all long term services provided to a Medicaid resident of a nursing facility except for services reimbursed through another Medicaid payment source. The "Basic Rate" is the bundled payment rate unless the resident qualifies for the complex medical add-on rate (in addition to the basic rate) or the bundled pediatric rate (instead of the basic rate).

(8) "Case Manager" means a Seniors and People with Disabilities or Area Agency on Aging employee who assesses the service needs of an applicant or eligible individual, determines eligibility and offers service choices to eligible individuals. The case manager authorizes and implements the service plan and monitors the services delivered.

(9) "Cash Method of Accounting" means a method of accounting in which revenues are recognized only when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for them.

(10) "Categorical Determinations" means the provision in the Code of Federal Regulations {42 CFR 483.130} for creating categories that describe certain diagnoses, severity of illness or the need for a particular service that clearly indicates that admission to a nursing facility is normally needed or that the provision of specialized services is not normally needed.

(a) Membership in a category may be made by the evaluator only if existing data on the individual is current, accurate and of sufficient scope.

(b) An individual with Mental Illness or Developmental Disabilities may enter a nursing facility without PASRR Level II evaluation if criteria of a categorical determination are met as described in OAR 411-070-0043(2)(a)-(2)(c).

(11) "Certification" and "Certification for the Categorical Determination of Exempted Hospital Discharge" means that the attending physician has written orders for the individual to receive skilled services at the nursing facility.

(12) "Certified Program" means a hospital, private agency or an Area Agency on Aging certified by the Department to conduct Private Admission Assessments in accordance with ORS 410.505 through 410.530.

(13) "Change of Ownership" means a change in the individual or legal organization that is responsible for the operation of a nursing facility. Change of ownership does not include changes that are merely changes in personnel, e.g., a change of administrators. Events that change ownership include but are not limited to the following:

(a) The form of legal organization of the owner is changed (e.g., a sole proprietor forms a partnership or corporation);

(b) The title to the nursing facility enterprise is transferred to another party;

(c) The nursing facility enterprise is leased or an existing lease is terminated;

(d) Where the owner is a partnership, any event occurs which dissolves the partnership;

(e) Where the owner is a corporation, it is dissolved, merges with another corporation that is the survivor, or consolidates with one or more other corporations to form a new corporation; or

(f) The facility changes management via a management contract.

(14) "Client" means a resident for whom payment is made under the Medicaid Program.

(15) "Compensation" means the total of all benefits and remuneration, exclusive of payroll taxes and regardless of the form, provided to or claimed by an owner, administrator or other employee. They include but are not necessarily limited to the following:

(a) Salaries paid or accrued;

(b) Supplies and services provided for personal use;

(c) Compensation paid by the facility to employees for the sole benefit of the owner;

(d) Fees for consultants, directors, or any other fees paid regardless of the label;

(e) Key man life insurance;

(f) Living expenses, including those paid for related persons; or

(g) Gifts for employees in excess of federal Internal Revenue Service reporting guidelines.

(16) "Complex Medical Add-On Payment" and "Medical Add-On" means the statewide standard supplemental payment rate for a Medicaid resident of a nursing facility whose service is reimbursed at the basic rate if the resident needs one or more of the medication procedures, treatment procedures or rehabilitation services listed in OAR 411-070-0091, for the additional licensed nursing services needed to meet the resident's increased needs.

(17) "Continuous" means more than once per day, seven days per week. Exception: If only skilled rehabilitative services and no skilled nursing services are required, "continuous" means at least once per day, five days per week.

(18) "Costs Not Related to Resident Services" means costs that are not appropriate or necessary and proper in developing and maintaining the operation of a nursing facility. Such costs are not allowable in computing reimbursable costs. They include, for example, costs of meals sold to visitors, cost of drugs sold to individuals who are not residents, cost of operation of a gift shop and similar items.

(19) "Costs Related to Resident Services" means all necessary costs incurred in furnishing nursing facility services, subject to the specific provisions and limitations set out in these rules. Examples of costs related to resident services include nursing costs, administrative costs, costs of employee pension plans and interest expenses.

(20) "CPI" means the Consumer Price Index for all items and all urban consumers.

(21) "Department" or "DHS" means the Department of Human Services.

(22) "Developmental Disabilities" means a disability that originates in childhood that is likely to continue and significantly impacts adaptive behavior. Developmental Disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18; and

(b) Originates in the brain and has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a significant impairment in adaptive behavior; and

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(d) The condition or impairment must not be primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit Hyperactivity Disorder, a learning disability, personality disorder or sensory impairment.

(23) "Direct Costs" means costs incurred to provide services required to directly meet all the resident nursing and activity of daily living service needs. These costs are further defined in these rules. Examples: The person who feeds food to the resident is directly meeting the resident's needs, but the person who cooks the food is not. The person who is trained to meet the resident's needs incurs direct costs whereas the person providing the training is not. Costs for items that are capitalized or depreciated are excluded from this definition.

(24) "DRI Index" means the "HCFA or CMS Nursing Home Without Capital Market Basket" index, which is published quarterly by DRI/McGraw — Hill in the publication, "Global Insight Health Care Cost Review."

(25) "Exempted Hospital Discharge" for PASRR means an individual seeking temporary admission to a nursing facility from a hospital as described in OAR 411-070-0043(2)(a).

(26) "Facility" or "Nursing Facility" means an establishment that is licensed and certified by the Department as a nursing facility. A nursing facility also means a Medicaid certified nursing facility only if identified as such.

(27) "Facility Financial Statement" means Form SPD 35, or Form SPD 35A (for hospital-based facilities), and includes an account number listing of all costs to be used by all nursing facility providers in reporting to the Department for reimbursement.

(28) "Fair Market Value" means the price for which an asset would have been purchased on the date of acquisition in an arms-length transaction between a well-informed buyer and seller, neither being under any compulsion to buy or sell.

(29) "Generally Accepted Accounting Principles" means the accounting principles approved by the American Institute of Certified Public Accountants.

(30) "Goodwill" means the excess of the price paid for a business over the fair market value of all other identifiable, tangible, and intangible assets acquired, or the excess of the price paid for an asset over its fair market value.

(31) "Historical Cost" means the actual cost incurred in acquiring and preparing a fixed asset for use. Historical cost includes such planning costs as feasibility studies, architects' fees and engineering studies. It does not include "start-up costs" as defined in this rule.

(32) "Hospital-Based Facility" means a nursing facility that is physically connected and operated by a licensed general hospital.

(33) "Indirect Costs" means the costs associated with property, administration and other operating support (real property taxes, insurance, utilities, maintenance, dietary (excluding food), laundry and housekeeping). These costs are further described in OAR 411-070-0359, 411-070-0428, and 411-070-0465.

(34) "Interrupted-Service Facility" means an established facility recertified by the Department following decertification.

(35) "Level I" means a component of the Federal PASRR requirement. It refers to the identification of individuals who are potential nursing facility admissions who have indicators of Mental Illness or Developmental Disabilities {42 CFR 483.128(a)}.

(36) "Level II" means a component of the Federal PASRR requirement. It refers to the evaluation and determination of whether nursing facility services and specialized services are needed for individuals with Mental Illness or Developmental Disability who are potential nursing facility admissions, regardless of the source of payment for the nursing facility service {42 CFR 483.128(a)}. Level II evaluations include assessment of the individual's physical, mental and functional status {42 CFR 483.132}.

(37) "Level of Care Determination" means an evaluation of the intensity of a person's health service needs. The level of care determination may not be used to require that the person receive services in a nursing facility.

(38) "Medical Add-On" or "Complex Medical Add-On Payment" has the meaning provided in section (16) of this rule.

(39) "Mental Illness" means a major mental disorder as defined in the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM IV-TR) limited to schizophrenic, paranoid and schizoaffective disorders, bipolar (manic-depressive) and atypical psychosis. "Mental Illness" for pre-admission screening means having both a primary diagnosis of a major mental disorder (schizophrenic, paranoid, major affective and schizoaffective disorders, or atypical psychosis) and treatment related to the diagnosis in the past two years. Diagnoses of dementia or Alzheimers are excluded.

(40) "Mental Retardation" means significantly sub-average general intellectual function defined as IQ's under 70 existing concurrently with significant impairments in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Individuals of borderline intelligence, IQ's 70-75, may be considered to have Mental Retardation if there is also significant impairment of adaptive behavior. The adaptive behavior must be primarily related to the issues of Mental Retardation. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Levels of Mental Retardation are:

(a) Mild Mental Retardation is used to describe the degree of retardation when intelligence test scores are 50-69. Individuals with IQ's in the 70-75 range can be considered as having Mental Retardation if there is significant impairment in adaptive behavior as defined in OAR 411-320-0020.

(b) Moderate Mental Retardation is used to describe the degree of retardation when intelligence test scores are 35-49.

(c) Severe Mental Retardation is used to describe the degree of retardation when intelligence test scores are 20-34.

(d) Profound Mental Retardation is used to describe the degree of retardation when intelligence test scores are below 20.

(41) "Necessary Costs" means costs that are appropriate and helpful in developing and maintaining the operation of resident facilities and activities. These costs are usually costs that are common and accepted occurrences in the field of long term nursing services.

(42) "New Admission" for PASRR purposes means an individual admitted to any nursing facility for the first time. It does not include individuals moving within a nursing facility, transferring to a different nursing facility or individuals who have returned to a hospital for treatment and are being admitted back to the nursing facility. New admissions are subject to the PASRR process {42 CFR 483.106(b)(1), (3), (4)}.

(43) "New Facility" means a nursing facility commencing to provide services to Seniors and People with Disabilities Division recipients.

(44) "Nursing Aide Training and Competency Evaluation Program (NATCEP)" means a nursing assistant training and competency evaluation program approved by the Oregon State Board of Nursing pursuant to ORS chapter 678 and the rules adopted pursuant thereto.

(45) "Ordinary Costs" means costs incurred that are customary for the normal operation.

(46) "Oregon Medical Professional Review Organization (OMPRO)" means the organization that determines level of services, need for services, and quality of services.

(47) "Pediatric Rate" means the statewide standard payment rate for all long term services provided to a Medicaid resident under the age of 21 who is served in a pediatric nursing facility or a self-contained pediatric unit.

(48) "Perquisites" means privileges incidental to regular wages.

(49) "Personal Incidental Funds" means resident funds held or managed by the licensee or other person designated by the resident on behalf of a resident.

(50) "Placement" means the location of a specific place where health services can be adequately provided to meet the service needs.

(51) "Pre-Admission Screening (PAS)" means the assessment and determination of a potential Medicaid-eligible individual's need for nursing facility services, including the identification of individuals who can transition to community based service settings and the provision of information about community based alternatives. This assessment and determination is required when potentially Medicaid-eligible individuals are at risk for admission to nursing facility services. PAS may include the completion of the Federal PASRR Level I requirement {42 CFR, Part 483, (C)-(E)}, to identify individuals with Mental Illness or Mental Retardation or Developmental Disabilities.

(52) "Pre-Admission Screening and Resident Review (PASRR)" means the Federal requirement, {42 CFR, Part 483, (C)-(E)}, to identify individuals who have Mental Illness or Developmental Disabilities and determine if nursing facility service is required and if specialized services are required. PASRR includes Level I and Level II functions.

(53) "Prior-Authorization" means the local Seniors and People with Disabilities Division/Area Agency on Aging office participates in the development of proposed nursing facility care plans to assure that the facility is the most suitable service setting for the individual. Nursing facility reimbursement is contingent upon prior-authorization.

(54) "Private Admission Assessment (PAA)" means the assessment that is conducted for non-Medicaid individuals as established by ORS 410.505-410.545 and OAR chapter 411, division 071, who are potential

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admissions to a Medicaid-certified nursing facility. Service needs are evaluated and information is provided about long-term service choices. A component of PAA is the Federal PASRR Level I requirement, [42 CFR, Part 483.128(a)], to identify individuals with Mental Illness or Developmental Disabilities.

(55) "Provider" means an organization that has entered into an agreement with the Department to provide services for individuals served by the Department.

(56) "Reasonable Consideration" means an inducement that is equivalent to the amount that would ordinarily be paid for comparable goods and services in an arms-length transaction.

(57) "Related Organization" means an entity that is under common ownership or control with, or has control of, or is controlled by the contractor. An entity is deemed to be related if it has five percent or more ownership interest in the other. An entity is deemed to be related if it has capacity derived from any financial or other relationship, whether or not exercised, to influence directly or indirectly the activities of the other.

(58) "Resident" or "Individual" means those for whom payment is made under the Medicaid program.

(59) "Resident Review" means a review conducted by the Addictions and Mental Health Division for individuals with Mental Illness or by the Seniors and People with Disabilities Division for individuals with Developmental Disabilities who are residents of nursing facilities. The findings of the Resident Review may result in referral to PASRR Level II [42 CFR 483.114].

(60) "Restricted Fund" means a fund in which the use of the principal or principal and income is restricted by agreement with or direction by the donor to a specific purpose. Restricted fund does not include a fund over which the owner has complete control. The owner is deemed to have complete control over a fund that is to be used for general operating or building purposes.

(61) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(62) "Specialized Services for Mental Illness" means mental health services delivered by an interdisciplinary team in an inpatient psychiatric hospital for treatment of acute mental illness.

(63) "Specialized Services for Mental Retardation/Developmental Disabilities" means:

(a) For individuals with Mental Retardation/Developmental Disabilities under age 21, specialized services are equal to school services; and

(b) For individuals with Mental Retardation/Developmental Disabilities over age 21, specialized services means:

(A) A consistent and ongoing program that includes participation by the individual in continuous, aggressive training and support to prevent loss of current optimal function; and

(B) Promotes the acquisition of function, skills and behaviors necessary to increase independence and productivity; and

(C) Is delivered in community-based or vocational settings at a minimum of 25 hours a week.

(64) "Start-Up Costs" means one-time costs incurred prior to the first resident being admitted. Start-up costs include administrative and nursing salaries, utility costs, taxes, insurance, mortgage and other interest, repairs and maintenance, training costs, etc. They do not include such costs as feasibility studies, engineering studies, architect's fees or other fees that are part of the historical cost of the facility.

(65) "Supervision" means initial direction and periodic monitoring of performance. Supervision does not mean that the supervisor is physically present when the work is performed.

(66) "Title XVIII" and "Medicare" mean Title XVIII of the Social Security Act.

(67) "Title XIX," "Medicaid," and "Medical Assistance" means Title XIX of the Social Security Act.

(68) "Uniform Chart of Accounts (Form SPD 35)" means a list of account titles identified by code numbers established by the Department for providers to use in reporting their costs.

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

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0010, AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1985, f. 5-31-85, ef. 6-1-85; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 12-2007, f. 8-30-07, cert. ef. 9-1-07; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08

411-070-0027

Complex Medical Add-On Payment Authorization

(1) PAYMENT. SPD may authorize payment for a medical add-on (in addition to the basic rate) when the resident requires one or more of the treatments, procedures and services listed in OAR 411-070-0091, for the additional licensed nursing services needed to meet the resident's increased needs.

(2) AUTHORIZATION. For a Medicaid resident whose condition or service needs meet the medical add-on criteria listed in OAR 411-070-0091, the medical add-on may be effective from the date the resident's condition or service needs meets the medical add-on criteria to the last date the resident's condition or service needs continues to meet the medical add-on criteria.

(a) Initial Authorization — The facility must submit documentation to SPD's Complex Medical Add-On Coordinator for initial authorization of the add-on, using SPD's Complex Medical Add-On Procedure Code(s), to provide justification that the residents' service needs meet add-on criteria.

(b) Continued Payment — SPD may continue to pay the medical add-on only as long as the resident's needs meet one or more of the treatments, procedures and services listed in OAR 411-070-0091 and the facility maintains the required documentation.

(3) DOCUMENTATION. The licensed nursing staff of the nursing facility must keep sufficient documentation pertinent to the qualified complex medical procedure code(s) in the resident's clinical record to justify the medical add-on payment determination in accordance with these rules (refer to OAR 411-070-0091) and must make it available to SPD upon request.

(4) MEDICAL ADD-ONS PROHIBITED. SPD will not provide medical add-on payments for a facility with a waiver that allows a reduction of eight or more hours per week from required licensed nurse staffing hours.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070 & 414.065

Hist.: SSD 20-1990, f. & cert. ef. 10-4-90; SSD 21-1990(Temp), f. & cert. ef. 10-5-90; SSD 6-1991, f. & cert. ef. 3-25-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08

411-070-0035

Complex Medical Add-On Notification, Effective Dates and Administrative Review

(1) NOTIFICATION. The nursing facility must notify SPD's Complex Medical Add-On Coordinator by completing SPD's Weekly Add-On Report to request authorization for complex medical add-on procedure code(s) (Refer to OAR 411-070-0091). SPD will assign the facility a weekly report due date. The facility must accurately report, on a weekly basis, all of the following complex medical activity for the seven days prior to the report's due date (excluding weekends, state holidays and any business day the offices of the state of Oregon are closed by the Governor or the Governor's designee):

(a) Admission of any Medicaid resident whose condition or service needs meet the criteria for a complex medical add-on procedure code(s). This includes a readmission or return of a Medicaid resident following a leave of absence from the nursing facility whose needs meet add-on criteria.

(A) The nursing facility must add these residents to the "new" section of the next weekly report filed after the resident's condition or service needs meets the medical add-on criteria.

(B) Following a resident's return from a leave of absence, the nursing facility must add these residents to the "new" section of the next weekly report filed after the resident's return, if their condition or service needs meet a medical add-on procedure code(s).

(C) If the nursing facility fails to add the resident to the next weekly report filed or files the report more than two working days after it is due, SPD will adjust the requested effective add-on date and pay the medical add-on from the date of notification only.

(D) For a resident whose condition or service needs meet a medical add-on procedure code(s), the medical add-on is effective only until the last date the resident's condition or need continues to meet medical add-on procedure code(s) criteria.

(b) A Medicaid resident whose condition or service needs change and now meets the criteria for a complex medical add-on procedure code(s).

(A) The nursing facility must add these residents to the "new" section of the next weekly report filed after the resident's condition or service needs meets the medical add-on criteria.

(B) If the nursing facility fails to add the resident to the next weekly report filed or files the report more than two working days after it is due,

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SPD will adjust the requested effective add-on date and pay the medical add-on from the date of notification only.

(C) For a resident whose condition or service needs meet a medical add-on procedure code(s), the medical add-on is effective only until the last date the resident's condition or need continues to meet medical add-on procedure code(s) criteria.

(c) A Medicaid resident whose condition or service needs continue to meet the criteria for a complex medical add-on procedure code(s), only if that same procedure code(s) has been approved or is pending approval by SPD's Complex Medical Add-On Coordinator. The facility must add these residents to the "existing" section of the next weekly report filed after the resident's condition or service needs has been approved or is pending approval.

(d) Discontinuation of a complex medical add-on procedure code(s) for a resident whose condition or service needs no longer meet the criteria for the complex medical add-on procedure code(s). This includes residents on a leave of absence from the nursing facility. The nursing facility must add these residents to the "discontinued" section of the next weekly report filed after the last date the resident's condition or service needs continues to meet the medical add-on procedure code(s) criteria.

(2) NOTIFICATION FOR EMERGENT MEDICAL OR SURGICAL PROBLEMS AND EMERGENT BEHAVIOR PROBLEMS.

(a) For a resident with an emergent medical or surgical problem or an emergent behavior problem, the nursing facility must contact SPD's Complex Medical Add-On Coordinator the next working day following the emergent medical, surgical or behavior problem for pre-authorization of complex medical add-on.

(b) If the nursing facility fails to contact SPD in a timely manner, SPD will pay the medical add-on from the date of notification only.

(c) For a resident whose condition or service needs change by an emergent medical, surgical or behavior problem, the medical add-on is effective only until the last date the resident's condition or need continues to meet medical add-on procedure code(s) criteria.

(3) ADMINISTRATIVE REVIEW. If a provider disagrees with the decision of SPD's Complex Medical Add-On Coordinator to make or deny an adjustment in the medical add-on payment for a Medicaid resident, the provider may request from SPD an administrative review of the decision. The provider must submit its request for review in writing within 30 days of receipt of the notice to make or deny the adjustment. The provider must submit documentation, as requested by SPD, to substantiate its position. SPD will notify the provider in writing of its informal decision within 45 days of SPD's receipt of the provider's request for review. SPD's informal decision will be an order in other than a contested case and subject to review pursuant to ORS 183.484.

(4) OVERPAYMENT FOR MEDICAL ADD-ONS. SPD will collect monies that were overpaid to a facility for any period SPD determines the resident's condition or service needs did not meet the criteria for the medical add-on, or determines the facility did not maintain the required documentation.

Stat. Auth.: ORS 414.070
Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; AFS 40-1979, f. 10-31-79, ef. 11-1-79; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0050 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 10-1983, f. 10-19-83, ef. 11-1-83; SSD 8-1985, f. 6-13-85, ef. 6-15-85; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08

411-070-0045

Facility Payments

(1) PRIOR AUTHORIZATION. The Department may reimburse a nursing facility for services provided to a Department resident only if prior authorized after the Department has participated in development of the placement plan and is satisfied that the placement is justified and most suitable for the person according to the Department care plan. The Department may not reimburse a nursing facility for services rendered prior to the date of referral to the Department. A nursing facility must verify that the local SPD/Type B AAA where the facility is located is involved in the placement.

(2) The facility must confirm an individual's financial eligibility for Medicaid payment of any nursing facility service with the local office. Medicaid eligibility is based on the requirements outlined in OAR chapter 461. The facility is responsible for collecting resident liability from the resident or their responsible party.

(3) PAYMENT TO PROVIDER. Provider payments will be made following the month of service. For billing, the Department will mail Form SDS 483, Invoice and Payment Authorization, to each facility.

(4) RESIDENT'S INCOME. A resident's income, exclusive of the authorized allowance for personal incidental needs and other prior authorized special needs, will be offset as a credit against the established Department rate paid to that facility.

(5) REDUCED PAYMENT FOR ABUSE.

(a) If abuse of a resident, according to the provisions of ORS 441.630 to 441.685, is substantiated by the Department, the Department may reduce the payment for the resident(s) for the month the abuse occurred, and until such time as the Department determines the conditions leading to the abuse have been corrected.

(A) The facility will receive payment for services provided for the resident as determined by the Department. This determination will be based on the absence of appropriate services that resulted in the substantiated abuse of a resident.

(B) The reduced payment may not be considered a reduction in benefits for the resident.

(b) The Department will notify the facility by certified mail at least 15 days prior to taking action to reduce payment.

(A) The notice will include the basis of the Department decision, the effective date of the reduced payment, the amount of the reduced payment, and will advise the facility of their right to request review by the Assistant Director if such request is made in writing within 30 days of the receipt of the notice.

(B) If a request for review is made, the Assistant Director will include the basis of the Department decision, the effective date of the reduced review and all material relating to the allegation of resident abuse and to the reduction in payment. The Assistant Director will include the basis of the Department decision, the effective date of the reduced determination, based upon review of the material, whether or not to sustain the decision to reduce payments to the facility and will notify the facility of the decision within 20 days of receiving the request for review.

(C) If the Assistant Director determines not to sustain the decision to reduce payments, the reduction will be lifted immediately. Otherwise, the reduction in payment will remain in effect until the Department determines the conditions leading to the abuse have been corrected.

(D) If the decision to reduce payment is sustained, the payment reduction will not be recovered in the year end settlement.

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

Stat. Auth.: ORS 410.070 & 414.065

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; Renumbered from 461-017-0070 by Ch. 184, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 20-1990, f. & cert. ef. 10-4-90; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08

411-070-0085

Bundled Rate

(1) PURPOSE. The nursing facility rate established for a facility is a bundled rate and includes all services, supplies and facility equipment required for services.

(2) SERVICES AND SUPPLIES.

(a) The following services and supplies required to provide services in accordance with each resident's care plan are included in the bundled rate:

(A) All nursing services defined in OAR 411-086-0110 through 411-086-0160;

(B) All support services and supplies associated with the required nursing services;

(C) All activity services, supplies and staffing as defined in OAR 411-086-0230;

(D) All social services, supplies and staffing as defined in OAR 411-086-0240;

(E) All dietary services, supplies and staffing as defined in OAR 411-086-0250;

(F) All professional consultant services;

(G) All services of the facility medical director;

(H) Management of resident funds, including purchase of items;

(I) Room and board, including:

(i) Special diets and non-pumped food supplements; and

(ii) Laundry, whether performed by the facility staff or an outside provider, including laundering and marking of resident's personal clothing and bedding;

(J) Miscellaneous services and supplies, including:

(i) Items stocked by the facility in gross supply and administered individually on physician's order;

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(ii) Items owned or rented by the facility that are utilized by individual residents but are reusable and are routinely expected to be available in a nursing facility;

(iii) Shaves, haircuts, supplies and shampoos as required for grooming and cleanliness, whether performed by facility staff or by an outside provider; and

(iv) Transportation provided in vehicles that are owned or leased by the facility or by any person who holds an ownership interest in the facility.

(b) Items included within the bundled rate must meet all of the following criteria:

(A) Item(s) are medically appropriate;

(B) Item(s) are most effective and least costly means to meet the individuals' needs; and

(C) Item(s) are allowed in the state plan.

(c) The Oregon Health Plan will continue to provide coverage for specified items and equipment in accordance with OAR chapter 410, division 122. No entitlement to any item is created for any resident in a nursing facility based solely on the listing of an item in OAR chapter 410, division 122, as potentially included in the nursing facility bundled rate. Oregon Health Plan limits on duration, scope and/or frequency of provision of the item(s) may not apply to the bundled rate if the facility needs to provide the item(s) in excess of the limits in order to meet resident needs. Nursing facilities are not required to purchase all specified codes, forms, sizes or varieties of the items listed in OAR chapter 410, division 122, so long as the residents' service needs are met. Nursing facilities are not required to honor individual preferences for specific types of equipment and supplies.

(d) The bundled rate pays for all equipment and supplies, unless the item(s) is specified as not paid for by the bundled rate. Equipment and supplies paid for in the bundled rate include:

(A) Oxygen and oxygen equipment, including concentrators, unless the oxygen provided exceeds 1,000 liters in a 24-hour period;

(B) Glucose monitors and diabetic equipment;

(C) Nebulizers and nebulizer supplies;

(D) Ostomy supplies;

(E) Urological supplies;

(F) Resident lifts except as specified in Appendix A to this rule;

(G) Toilet supplies, except as specified in Appendix A to this rule;

(H) Miscellaneous supplies;

(I) Surgical dressings;

(J) Incontinence supplies;

(K) All medically necessary wheelchairs and wheelchair accessories except:

(i) As specified in Appendix A to this rule; or

(ii) If at the time of admission, the individual's expected length of stay in the nursing facility is 30 days or less as confirmed on a written statement from the individual's attending physician, and the individual has a physician's order for the same wheelchair for on-going use in the individual's home and meets Department of Medical Assistance Programs (DMAP) criteria for a tilt-in-space wheelchair;

(L) Suction pumps and supplies;

(M) Tracheostomy supplies;

(N) Canes and crutches;

(O) Standing and positioning aides;

(P) Walkers;

(Q) Hospital beds, except as specified in Appendix A to this rule or if an exception need exists as determined by the DMAP prior authorization process;

(R) Pressure reducing support services, except as specified in Appendix A to this rule;

(S) Hospital bed accessories, except as specified in Appendix A to this rule;

(T) Bath supplies; and

(U) Over the counter medications as defined in Appendix B to this rule.

(e) The following services and supplies are NOT included in the bundled rate:

(A) Therapy services provided to residents by outside providers;

(B) Medical services by physicians or other practitioners other than the services required by OAR 411-086-0200;

(C) Radiology services, laboratory services and podiatry services;

(D) Transportation for residents to and from medical services in vehicles that are not owned or leased by the facility or by any person who holds an ownership interest in the facility;

(E) Biologicals (e.g., immunization vaccines);

(F) Hyperalimentation ;

(G) Prescription pharmaceuticals; or

(H) Ventilators.

Stat. Auth.: ORS 414.065 & 410

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; Renumbered from 461-017-0140, AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 1-1989, f. 1-27-89, cert. ef. 2-1-89; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 6-1995, f. 6-30-95, cert. ef. 7-1-95; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08

411-070-0091

Complex Medical Add-On Services

(1) LICENSED NURSING SERVICES. If a Medicaid resident qualifies for payment at the basic rate and if the resident's condition or service needs are determined to meet one or more of the procedures, routines or services listed in sections (1)(a) to (2) of this rule, and the nursing facility maintains documentation per OAR 411-070-0027, SPD may pay a complex medical add-on payment (in addition to the basic rate) for the additional licensed nursing services needed to meet the resident's increased needs.

(a) Medication Procedures.

(A) M-1 — Administration of medication(s) at least daily requiring skilled observation and judgment for necessity, dosage and effect, for example new anticoagulants, etc. (This category does not include routine medications, any oral medications or the infrequent adjustments of current medications). The facility must maintain a daily nursing note.

(B) M-2 — Intravenous injections or infusions, heparin locks used daily or continuously for hydration or medication. The facility must maintain a daily nursing note. For total parenteral nutrition (TPN) the facility must maintain daily documentation on a flow sheet and must maintain a weekly nursing note.

(C) M-4 — Intramuscular medications for unstable condition used at least daily. The facility must maintain a daily nursing note.

(D) M-5 — External infusion pumps used at least daily. This does not include external infusion pumps when the resident is able to self bolus. The facility must maintain a daily nursing note.

(E) M-6 — Hypodermoclysis - daily or continuous use. The facility must maintain a daily nursing note.

(F) M-7 — Peritoneal dialysis, daily. This does not include residents who can do their own exchanges. The facility must maintain a daily nursing note.

(b) Treatment Procedures.

(A) T-1 — Nasogastric, Gastrostomy or Jejunostomy tubes used daily for feedings. The facility must maintain daily information on a flow sheet and must maintain a weekly nursing note.

(B) T-2 — Nasopharyngeal suctioning, twice a day or more. Tracheal suctioning, as required, for a resident who is dependent on nursing staff to maintain airway. The facility must maintain a daily nursing note.

(C) T-3 — Percussion, postural drainage, and aerosol treatment when all three are performed twice per day or more. The facility must maintain a daily nursing note.

(D) T-4 — Ventilator dependence. Services for a resident who is dependent on nursing staff for initiation, monitoring and maintenance. The facility must maintain a daily nursing note.

(c) Skin/Wound.

(A) S-1 — Is limited to Stage III or IV pressure ulcers that require aggressive treatment and are expected to resolve. The facility must maintain a weekly wound assessment and a weekly nursing note. The pressure ulcer is eligible for add-on until the last day the ulcer is visibly a Stage III pressure ulcer. For complex medical add-on, facilities must stage the ulcer as it is visualized in appearance in accordance to the below definitions for determining if a resident's needs meet or continue to meet complex medical add-on criteria.

(i) Pressure ulcer means any skin ulcer caused by pressure resulting in damage of underlying tissues. Other terms used to indicate this condition include decubitus ulcers.

(ii) Stage II means a partial thickness loss of skin layers that presents clinically as an abrasion, blister or shallow crater.

(iii) Stage III means a full thickness of skin is lost, exposing the subcutaneous tissues. Presents as a deep crater with or without undermining adjacent tissue.

(iv) Stage IV means a full thickness of skin and subcutaneous tissue is lost, exposing muscle or bone.

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(v) A healing Stage III or IV pressure ulcer that has the visual appearance of a Stage II pressure ulcer cannot be considered eligible for purposes of complex medical criteria.

(B) S-2 — Open wound(s) as defined by dehisced surgical wounds or surgical wounds not closed primarily that require aggressive treatment and are expected to resolve. The facility must maintain a weekly wound assessment and a weekly nursing note.

(C) S-3 — Deep or infected stasis ulcers with tissue destruction equivalent to at least a Stage III. The facility must maintain a weekly wound assessment and a weekly nursing note. The stasis ulcer is eligible for add-on until the last day the ulcer is visually equivalent to a Stage III, or if the stasis ulcer is an infected, chronic Stage III or IV, it is eligible for add-on until it is no longer infected and returns to previous chronic Stage III or IV state. For complex medical add-on, facilities must stage the ulcer as it is visualized in appearance in accordance to the below definitions for determining if a resident's needs meet or continue to meet complex medical add-on criteria.

(i) Stasis ulcer means a skin ulcer, usually in the lower extremities, caused by altered blood flow from chronic vascular insufficiency, also referred to as venous insufficiency, lymphedema, arterial insufficiency or peripheral vascular disease.

(ii) Stage II means a partial thickness loss of skin layers that presents clinically as an abrasion, blister or shallow crater.

(iii) Stage III means a full thickness of skin is lost, exposing the subcutaneous tissues. Presents as a deep crater with or without undermining adjacent tissue.

(iv) Stage IV means a full thickness of skin and subcutaneous tissue is lost, exposing muscle or bone.

(v) A healing Stage III or IV stasis ulcer that has the visual appearance of a Stage II stasis ulcer cannot be considered eligible for purposes of complex medical criteria.

(vi) A chronic Stage III or IV stasis ulcer that is no longer infected and has returned to previous chronic Stage III or IV status cannot be considered eligible for purposes of complex medical criteria.

(d) O-4 — Insulin Dependent Diabetes Mellitus (IDDM).

(A) Unstable IDDM in a resident who requires sliding scale insulin; and

(i) Exhibits signs or symptoms of hypoglycemia and/or hyperglycemia; and

(ii) Requires nursing or medical interventions such as extra feeding, glucagon or additional insulin, transfer to emergency room; and

(iii) Is having insulin dosage adjustments.

(B) The facility must maintain a daily nursing note. A Medication Administration Record is required when sliding scale insulin or other medication related to the IDDM has been administered. While all three criteria do not need to be present on a daily basis, the resident must be considered unstable. A resident with erratic blood sugars, without a need for further interventions does not meet this criteria.

(e) Other.

(A) O-1 — Professional Teaching. Short term, daily teaching pursuant to discharge or self-care plan. The facility must maintain a teaching plan and a weekly nursing note.

(B) O-2 — Emergent medical or surgical problems, requiring short term licensed nursing observation and assessment. This criteria requires pre-authorization from SPD's Complex Medical Add-On Coordinator (Refer to OAR 411-070-0035). Eligibility for the add-on will be until the resident no longer requires additional licensed nursing observation and assessment for this medical or surgical problem. The facility must maintain a nursing note every shift.

(C) O-3 — Emergent Behavior Problems — Emergent behavior is a sudden, generally unexpected change or escalation in behavior of a resident that poses a serious threat to the safety of self or others and requires immediate intervention, consultation and a care plan. This criteria requires pre-authorization from SPD's Complex Medical Add-On Coordinator (Refer to OAR 411-070-0035). Eligibility for the add-on will be until the resident no longer requires additional licensed nursing observation and assessment for this medical problem. The facility must maintain a nursing note every shift.

(2) R-1 — REHABILITATION SERVICES.

(a) Physical Therapy — At least five days every week. The facility must maintain the therapist's notes and a weekly nursing progress note related to the rehabilitation service(s) being provided.

(b) Speech Therapy — At least five days every week. The facility must maintain the therapist's notes and a weekly nursing progress note related to the rehabilitation service(s) being provided.

(c) Occupational Therapy — At least five days every week. The facility must maintain the therapist's notes and a weekly nursing progress note related to the rehabilitation service(s) being provided.

(d) Any combination of physical therapy, occupational therapy and speech therapy at least five days every week qualifies. The facility must maintain the therapist's notes and a weekly nursing progress note related to the rehabilitation service(s) being provided.

(e) Respiratory Therapy — At least five days every week by respiratory therapist. These services must be authorized by Medicare, Medicaid Oregon Health Plan or a third party payor. The facility must maintain the therapist's notes and a weekly nursing progress note.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070 & 414.065

Hist.: SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SDSD 5-1998, f. 6-25-98, cert. ef. 7-1-98; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08

411-070-0095

Resident Funds

(1) Each Medicaid resident is allowed a monthly amount for personal incidental needs. For purposes of this rule, personal incidental funds (PIFs) include monthly payments as allowed and previously accumulated resident savings.

(2) FACILITY RESPONSIBILITY.

(a) The facility must not charge for items included in the bundled rate or for other items or services for which funding can be provided through the Medicaid agency or another non-resident source.

(b) The facility must hold, safeguard and account for a resident's funds if he or she requests such management; or if the case manager requests on Form SDS 0542 that the facility perform such management.

(c) The facility must maintain a record of the request by the resident, case manager or resident representative on Form SDS 0542, covering all funds it holds or manages for residents.

(d) The facility must manage resident funds in a manner in the resident's best interest.

(A) The facility must not charge the resident for holding, disbursing, safeguarding, accounting for, or purchasing from resident funds. Charges for these services are included in the Nursing Facility Financial Statement, Form SPD 35 or 35A and are considered allowable costs reimbursable through the bundled rate.

(B) The cost for items charged to resident funds must not be more than the actual purchase price charged by an unrelated supplier.

(C) The facility may not charge SPD residents or other sources for items or services furnished if all residents receiving such items or services are not charged. Charges must be for direct, identifiable services or supplies furnished to individual residents. A periodic "flat" charge for routine items, such as beverages, cigarettes, etc., is not allowed. Charges must be made only after services are performed or items are delivered.

(D) The facility must keep any funds received from a resident for holding, safeguarding and accounting separate from the facility's funds.

(E) The nursing facility may request technical assistance from SPD/Type B AAA staff, however, responsibility for managing resident funds in the resident's best interest remains with the facility.

(F) When a facility is a resident's representative payee, it must fulfill its duties as representative payee in accordance with applicable federal regulations and state regulations that define those duties.

(G) Facilities holding resident funds must be insured to cover all amounts held in trust.

(3) DELEGATION OF AUTHORITY.

(a) The resident may manage his or her personal financial resources, including PIFs, and may authorize another person or the facility to manage them. If appropriate, the facility must, upon written authorization by the resident, resident representative, or case manager on the resident's behalf, accept responsibility for holding, safeguarding, spending and accounting of the resident's funds.

(b) At the time of admission, the facility must assure that the resident, or representative delegating such responsibility to the facility, completes Form SDS 0542, Designation of Management of Personal Incidental Funds. The facility must sign the form acknowledging responsibility. The facility must retain the original in the resident's account records, with copies to the resident and SPD.

(c) The resident wishing to change delegation must do so by completing a new Form SDS 0542 that must be available at the facility.

(d) SPD cannot be delegated to account for the resident's funds.

(4) RESIDENT ADMISSION.

(a) The facility must provide each resident or resident representative with a written statement at the time of admission that:

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(A) States the facility's responsibility to pay for all services, supplies and facility equipment required for services (basic rate);

(B) Lists all services provided by the facility that are not included in the facility's basic rate;

(C) States that there is no obligation for the resident to deposit funds with the facility;

(D) Describes the resident's right to select how personal funds will be handled. The following alternatives must be included:

(i) The resident's right to receive, retain, and manage his or her personal funds or have this done by a legal guardian, or conservator;

(ii) The resident's right to delegate on the SDS 0542 another person to act for the purpose of managing his or her personal funds; and

(iii) The facility's obligation, upon written authorization by the resident or representative, to hold, safeguard and account for the resident's personal funds in accordance with these rules;

(E) States that any facility charge for this service is included in the facility's basic rate, and that the facility cannot charge for resident fund management or charge residents more than the actual purchase price of items at an unrelated supplier;

(F) States that the facility is permitted to accept a resident's funds to hold, safeguard and account for, only upon the written authorization of the resident or representative, or if the facility is appointed as the resident's representative payee; and

(G) States that if the resident becomes incapable of managing his or her personal funds and does not have a representative, the facility is required to manage his or her personal funds if requested on the Form SDS 0542 by the case manager.

(b) The facility must obtain documentation on the Form SDS 0542 of:

(A) Resident intention to manage own funds; or

(B) Resident, resident representative, or case manager delegation to another individual or the facility to manage the resident's funds.

(5) RESIDENT ACCOUNT RECORDS.

(a) The facility must maintain a Resident Account Record (Form SDS 713), on an ongoing, day-to-day basis, for each resident for whom the facility is holding funds. Each receipt or disbursement of funds must be posted to the resident's account. Posting from supporting documentation must be done within seven days after the transaction date.

(b) The resident account record must show, in detail with supporting documentation, all monies received on behalf of the resident and the disposition of all funds so received. Persons shopping for residents must provide a list showing description and price of items purchased, along with payment receipts for these items.

(c) Individual resident accounts must be reconciled and listed by the facility at the end of each calendar month.

(d) Petty cash accounts must be reconciled within ten days of receipt of the bank statement.

(e) The facility must maintain a monthly list that separately lists the petty cash and savings account balances for each resident for whom the facility is managing funds.

(f) Records and supporting documentation must be retained for at least three years following the death or discharge of the resident.

(g) Accumulations of \$50 or more.

(A) The facility must, within 15 days of receipt of the money, deposit in an individual interest-bearing account any funds held in excess of \$50 for an individual resident, unless this money is being managed in a Trust and Agency Account by SPD.

(B) The account must be individual to the resident, must be in a form that clearly indicates that the facility does not have an ownership interest in the funds, and must be insured under federal or state law.

(h) Accumulations of Under \$50.

(A) The facility may accumulate no more than \$50 of a resident's funds in a pooled bank account or petty cash fund that must be separate from facility funds.

(B) The interest earned on any pooled interest-bearing account containing residents' petty cash must be either prorated to each resident on an actual interest-earned basis, or prorated to each resident on the basis of his or her end-of-quarter balance.

(6) RESIDENT RIGHTS.

(a) The resident must be allowed to manage his or her own funds, or to delegate their management to another, unless the resident has been determined to be incompetent by a court of law. A resident who was not adjudicated incompetent may always decide how to spend his or her own funds.

(b) Facility staff delegated to manage resident funds must follow guidelines outlined in this rule and other state and federal laws and regula-

tions that may apply in order to assure that decisions not made by the resident are made in his or her best interest.

(c) The resident, family or friends has the right to be free from solicitation from the facility to purchase items that are included in the facilities daily rate.

(d) The resident must not be charged for any item included in the facility's daily rate unless the facility can show at least one of the following:

(A) The resident made an informed decision to purchase the item, understanding that a similar and appropriate item is included in the daily rate;

(B) The family requested that the facility purchase the item, understanding that a similar and appropriate item is included in the daily rate; or

(C) The resident is not currently able to make an informed decision to purchase the item, but did so prior to current incapacity.

(e) The resident, family or friends must not be charged for any drug designated by the Food and Drug Administration as less-than-effective unless it can show that both the physician and the resident made an informed decision to continue use of the drug.

(f) Prior to purchasing an item that is included in the facility's daily rate or is over \$50, the facility must consult with the SPD/Type B AAA case manager.

(g) The facility must not charge resident funds for any item or service that benefits the facility, facility staff or relatives or friends of facility staff, unless it can show that the resident made an informed decision to purchase the item or service.

(h) When the facility or SPD is of the opinion that a resident is incapable of managing personal funds and the resident has no representative, the facility must refer the resident to the case manager in the local SPD/Type B AAA, who will consult with the resident regarding resident preference. If the attending physician agrees, as documented on the Form SDS 544, Physician's Statement of Resident's Capacity to Manage Funds, that the resident is incapable of handling funds, the case manager will attempt to find a suitable delegate to manage the resident's funds. If no delegate can be found, the facility must assume the responsibility. If the resident disagrees with the designation of a delegate, the designation cannot be made, and the resident retains the right to manage, delegate, and direct use of his own money, if not adjudicated incompetent.

(7) ACCESS TO FUNDS, RECORDS.

(a) The facility must provide each resident or delegate reasonable access to his or her own financial records and funds. Reasonable access is defined as seven business days for records and one business day for funds.

(b) The facility must provide a written statement, at least quarterly, to each resident, delegate, or a person chosen by the resident to receive the statement. The quarterly statement must reflect separately all of the resident's funds that the facility has deposited in an interest-bearing account plus the resident funds held by the facility in a petty cash account or other account. The statement must include at least the following:

(A) Identification number and location of any account in which that resident's personal funds have been deposited;

(B) Balances at the beginning of the statement period;

(C) Total deposits with source and withdrawals with identification;

(D) Interest earned, if any;

(E) Ending balances; and

(F) Reconciliation.

(c) The facility must provide a quarterly Resident Account Record on Form SDS 713 to the local SPD/Type B AAA within 15 days following the end of the calendar quarter and provide a copy to the resident or an individual delegated by the resident to receive the copy.

(d) The resident or delegate must have access to funds in accordance with OAR 411-085-0350.

(e) Within ten business days of the resident's transfer or discharge, or appointment of a new delegate as documented on the Form SDS 0542, the facility must provide a final accounting and return to the resident, or the delegate, all of the resident's funds that the facility has received for holding, safeguarding, and accounting, and that are maintained in a petty cash fund or individual account.

(8) CHANGE OF OWNERSHIP.

(a) The facility must give each resident or delegate a written accounting of any personal funds held by the facility before any transfer of facility ownership occurs, with a copy to the local SPD/Type B AAA.

(b) The facility must provide the new owner and the local SPD/Type B AAA with a written accounting of all resident funds being transferred and must obtain a written receipt for those funds from the new owner.

ADMINISTRATIVE RULES

(9) LOCAL SPD/TYPE B AAA RESPONSIBILITY. The local SPD/Type B AAA must:

(a) Monitor receipt of SDS 713 forms and review them quarterly for appropriateness of expenditures;

(b) Monitor resident resources for resources over the current Medicaid limit;

(c) For residents incapable of managing their own funds and having no one to delegate to do so, attempt to determine resident wishes, seek physician input on the physician statement, and find a delegate, delegating the facility if necessary and not in conflict with resident wishes;

(d) Notify the facility of inappropriate expenditures and report uncorrected problems to SPD Central Office and assist residents in obtaining legal counsel; and

(e) Track expensive or reusable items purchased for residents through resident funds or by SPD and assure their appropriate use after resident death.

(10) DEATH OF RESIDENT.

(a) Within five business days following a resident's death, the facility must send a written accounting of the resident's funds to the executor or administrator of the resident's estate. If a deceased resident has no executor or administrator, the facility must provide the accounting to:

(A) The resident's next of kin;

(B) The resident's representative;

(C) The clerk of probate court of the county in which the resident died; and

(D) Estate Administration Unit, Seniors and People with Disabilities, P.O. Box 14021, Salem, OR 97309-5024.

(b) Within five business days following a resident's death, the facility must:

(A) Send a written accounting of the resident's funds and a listing of resident personal property, including wheelchairs, television sets, walkers, jewelry, etc., to the local SPD Estate Administration Unit;

(B) Hold personal property for 90 days, unless otherwise instructed by the SPD Estate Administration Unit; and

(C) Comply with the laws of Oregon regarding disbursement of resident funds, and any advance payments, or contact the Estate Administration Unit, SPD, for more detailed instructions.

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

Stat. Auth.: ORS 410.070 & 414.065

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & cert. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; AFS 35-1980, f. 6-30-80, ef. 7-1-80; Renumbered from 461-017-0160, AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1984, f. 7-20-84, ef. 9-1-84; SSD 1-1989, f. 1-27-89, cert. ef. 2-1-89; SSD 6-1989, f. & cert. ef. 5-1-89; SSD 20-1990, f. & cert. ef. 10-4-90; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08

411-070-0359

Allowable Costs

(1) ALLOWABLE COSTS. Allowable costs are the necessary costs incurred for the customary and normal operation of a facility, to the extent that they are reasonable and related to resident services.

(a) Accounting, Auditing and Data Processing — The costs of recording, summarizing, and reporting the results of operations are allowable.

(b) Advertising — Help wanted advertising and the expense related to the alphabetical listing in the yellow pages of a phone directory are allowable.

(c) Allowable Workers Compensation Dividends (Refunds) or Billings of the nursing facility are those dated in the fiscal reporting period.

(d) Auto and Travel Expense — Expense of maintenance and operation of a vehicle and travel expense related to resident services are reimbursable. The allowance for mileage reimbursement must not exceed the amount determined reasonable by the Internal Revenue Service for the period reported. Allowable out-of-state travel is restricted to Washington, Idaho and Northern California, no farther south than San Francisco. One out of state/contiguous area trip per year for two employees will be allowed, as long as it relates to resident services.

(e) Bad Debts — Bad debts related to Title XIX recipients are allowable.

(f) Bank and Finance Charges — Charges for routine maintenance of accounts are allowable.

(g) Communications — Charges for routine telephone service, including pagers, and cable television fees, are allowable.

(h) Compensation of Owners — Owner's compensation in accordance with OAR 411-070-0330 is allowable.

(i) Consultant Fees — Consultant fees are allowable provided they meet the criteria as outlined in OAR 411-070-0320.

(j) Criminal History Checks — Costs of criminal history checks of facility employees if mandated by federal or state law are allowable.

(k) Depreciation and Amortization — Depreciation schedules on buildings and equipment must be maintained. Depreciation expense is not allowable for land. Leasehold improvements may be amortized. Depreciation and amortization must be calculated on a straight-line basis and prorated over the estimated useful life of the asset. Effective July 1, 2003, these costs must be reported in accordance with OAR 411-070-0365, 411-070-0375 and 411-070-0385.

(l) Education and Training — Registration, tuition and book expense associated with education and training of personnel is allowed provided it is related to resident services. The costs associated with training and certifying nurse aides are not allowable for inclusion in the annual Nursing Facility Financial Statement. These costs are reimbursed separately by the Department, per OAR 411-070-0470.

(m) Employee Benefits — Employee benefits that are made available to all employees, are for the primary use of the employees, are generally considered by the industry as reasonable and important benefits to provide for employees, are not taxable as wages, and are allowable to the extent of employer participation.

(n) Food — Food products and supplements used in food preparation are allowable.

(o) Home Office Costs — Home office costs are allowable in accordance with OAR 411-070-0345.

(p) Insurance — Premiums for insurance on assets or for liability purposes, including vehicles, are allowable to the extent that they are related to resident services. Self-insurance costs are allowable only when expense is actually incurred.

(q) Interest — Interest on debt related to the provision of resident services is an allowable expense, except on or after July 1, 1984, interest expense related to that portion of the acquisition price of a long-term facility that exceeds the depreciable basis (OAR 411-070-0375) will not be reimbursable.

(r) Legal Fees — Legal fees directly related to resident services are allowable. Legal fees related to non-allowable costs are not allowable. Legal fees claimed as related to resident services must be explained and listed on Schedule A. Fees related to legal and administrative actions to resolve a disagreement with the state will be allowable if the action is resolved in the provider's favor, and the judge/hearings officer does not order the state to pay the provider's legal fees.

(s) Licenses, Dues and Subscriptions — Fees for facility licenses, dues in professional associations, and costs of subscriptions for newspapers, magazines, and periodicals provided for resident and staff professional use are allowable.

(t) Linen and Bedding — Linen and bedding costs for the facility are allowable.

(u) Management Fees — Management fees are allowable provided they meet the criteria for OAR 411-070-0350.

(v) Postage and Freight — Postage expense is considered an office supply cost. Freight will be posted to the same account as the item purchased.

(w) Property Costs — Costs related to purchase or lease of a facility are to be reported in Accounts 452 through 459 and 461.

(x) Purchased Services — Services that are received under contract arrangements are reimbursable to the extent that they are related to resident services and the sound conduct and operation of the facility.

(y) Rent or Lease Payments — Payments for the lease or rental of land, buildings, and equipment are to be reported. Payments for lease agreements entered into with a related party are limited to the lower of actual costs or the lease payments.

(z) Repairs and Maintenance — Costs of maintenance and minor repairs are allowable when related to the provision of resident services.

(aa) Salaries (Except Owners and Related Parties) — Salaries and wages of all employees engaged in resident service activities or overall operation and maintenance of the facility, including support activities of home offices and regional offices, are allowable.

(bb) Supplies — Cost of supplies used in resident services or providing services related to resident services are allowable.

(cc) Taxes — Property taxes on assets used in rendering resident services are allowable. Long Term Facility taxes paid on patient days are allowable, effective July 1, 2003.

(dd) Utilities — Costs for facility heating, lighting, water-sewer, and garbage provisions are allowable.

(ee) Utilization Review — Costs incurred for utilization review are Medicare related and are not allowable for Medicaid reimbursement.

ADMINISTRATIVE RULES

(2) EXCEPTIONS. Exceptions to the items listed in section (1) of this rule must be approved in writing to be allowable. Exceptions will not be granted for the following items:

- (a) Amortization of non-competitive agreement;
- (b) Goodwill;
- (c) Federal and other governmental income taxes;
- (d) Penalties and fines;

(e) Costs of services and items otherwise reimbursable through the Division of Medical Assistance Programs, other third party payors (see section (3) of this rule), or the resident's personal funds;

(f) The cost related to the functioning of Corporate Boards of Directors;

(g) Advertising for purposes of soliciting potential residents, except for listings in the yellow pages (see section (1)(b) of this rule);

- (h) The cost of salaries and supplies devoted to religious activities; or
- (i) Gifts and contributions.

(3) THIRD PARTY PAYORS. The purpose of this section is to assure that facilities are not paid twice, once through the Medicaid bundled rate and again through a third party payor, for providing a service. This section includes both allowed and non-allowed costs.

(a) Facilities must bill third party payors for nursing facility services whenever payment from a third party payor is or may be available. Examples of such payors are Medicare, Veterans Administration, insurance companies or a private resident when the items are not included in the basic rate.

(b) Failure to bill or collect from third party payors whenever appropriate will not cause these expenses to be considered allowable.

(c) The cost of services incurred for therapy services performed by non-employee therapists are reimbursable through a third party payor or the Division of Medical Assistance Programs and are non-allowable on the Nursing Facility Financial Statement.

(d) The cost of supplies and equipment medically necessary in the performance of therapy services that are reimbursable through a third party payor or the Division of Medical Assistance Programs, are non-allowable on the Nursing Facility Financial Statement.

Stat. Auth.: ORS 410.070 & 414.065

Stats. Implemented: ORS 410.070 & 414.065

Hist.: SSD 5-1985, f. & ef. 5-1-85; SSD 10-1986, f. & ef. 7-1-86; SSD 11-1986, f. 8-29-86, ef. 9-1-86; SSD 10-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 4-1992, f. & cert. ef. 6-24-92; SSD 13-1992, f. 12-31-92, cert. ef. 1-1-93; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 11-2004(Temp), f. & cert. ef. 5-28-04 thru 11-24-04; SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08

411-070-0442

Per Diem Rate Setting For the Rate Period Beginning July 1, 2003 Calculation of the Basic Rate and Complex Medical Needs Add-on Rate

(1) The rates are determined for the first year of each biennium, the rebasing year, and the second year of each biennium, the non-rebasing year.

(a) The Rebasing Year.

(A) The basic rate is based on the statements received by the Department by September (or postmarked by October 31, if an extension of filing has been approved by the Department) for the fiscal reporting period ending on June 30 of the previous even-numbered year. For example, for the biennium beginning July 1, 2003, statements for the period ending June 30, 2002 are used. The Department desk reviews or field audits these statements and determines the allowable costs for each nursing facility. The costs include both direct and indirect costs. The costs and days relating to pediatric beds are excluded from this calculation.

(B) For each facility, its allowable costs, less the costs of its self-contained pediatric unit (if any) is inflated from the mid-point of its fiscal reporting period to the mid-point of the first year of the biennium, hereafter referred to as the base year (e.g., for the biennium beginning July 1, 2003, the base year is the fiscal period ending June 30, 2004) by the annual change in the DRI Index, or its successor index, as measured in the previous 4th quarter.

(C) For each facility, its allowable costs per Medicaid day is determined using the allowable costs as inflated and resident days excluding pediatric days as reported in the statement.

(D) The facilities are ranked from highest to lowest by the facility's allowable costs per Medicaid day.

(E) The basic rate will be determined by ranking the allowable costs per Medicaid day by facility and identifying the allowable cost per day at the applicable percentage. If there is no allowable cost per day at the applicable percentage, the basic rate is determined by interpolating the differ-

ence between the allowable costs per day that are just above and just below the applicable percentage to arrive at a basic rate at the applicable percentage.

(i) The applicable percentage for the period beginning July 1, 2003 through June 30, 2005 is at the 63rd percentile.

(ii) The applicable percentage for the period beginning July 1, 2005 through June 30, 2007 is at the 70th percentile.

(iii) The applicable percentage for the period beginning July 1, 2007 is at the 63rd percentile.

(b) The Non-Rebasing Year. On July 1 of each non-rebasing year, the basic flat rate will be inflated by the annual change in the DRI Index, or its successor index, as measured in the previous 4th quarter.

(2) The complex medical needs add-on rate is 40 percent of the basic rate for the rebasing year and the non-rebasing year.

Stat. Auth.: ORS 410.070 & 414.065

Stats. Implemented: ORS 410.070 & 414.065

Hist.: SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08

411-070-0452

Pediatric Nursing Facilities

(1) PEDIATRIC NURSING FACILITY.

(a) A pediatric nursing facility is a licensed nursing facility at least 50 percent of whose residents entered the facility before the age of 14 and all of whose residents are under the age of 21.

(b) A nursing facility that meets the criteria of section (1)(a) of this rule will be reimbursed as follows:

(A) The pediatric rate is a prospective rate and is not subject to settlement.

(B) The facility specific pediatric cost per resident day will be inflated by the annual change in the DRI Index as measured in the previous 4th quarter. The Oregon Medicaid pediatric days are multiplied by the inflated facility specific cost per resident day for each pediatric facility. The totals are summed and divided by total Oregon Medicaid days to establish the weighted average cost per pediatric resident day. The rebase relationship percentage (90.18%), determined in the implementation of the flat rate system in 1997, is applied to the weighted average cost to determine the pediatric rate.

(C) On July 1 of each non-rebasing year after 1999, the pediatric rate will be increased by the annual change in the DRI Index, as measured in the previous 4th quarter. Beginning in 2001 rate rebasing will occur in alternate years. Rebasing of pediatric nursing facility rates will be calculated using the method described in section (1)(b)(B) of this rule.

(c) Even though pediatric facilities will be reimbursed in accordance with section (1)(b) of this rule, pediatric facilities must comply with all requirements relating to the timely submission of Nursing Facility Financial Statements.

(2) LICENSED NURSING FACILITY WITH A SELF-CONTAINED PEDIATRIC UNIT.

(a) A nursing facility with a self-contained pediatric unit is a licensed nursing facility that provides services for pediatric residents (residents under the age of 21) in a separate and distinct unit within or attached to the facility with staffing costs separate and distinct from the rest of the nursing facility. All space within the pediatric unit must be used primarily for purposes related to the services of pediatric residents and alternate uses must not interfere with the primary use.

(b) A nursing facility that meets the criteria of section (2)(a) of this rule will be reimbursed for its pediatric residents served for in the pediatric unit at the per diem rate described in section (1)(b) of this rule commencing on July 1, 1999.

(c) Licensed nursing facilities with a self-contained pediatric unit must comply with all requirements relating to the timely submission of Nursing Facility Financial Statements, and must file a separate attachment, on forms prescribed by the Department, related to the costs of the self-contained pediatric unit.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SSD 4-1988, f. & cert. ef. 6-1-88; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 6-1995, f. 6-30-95, cert. ef. 7-1-95; SSD 6-1996, f. & cert. ef. 7-1-96; SSD 10-1999, f. 11-30-99, cert. ef. 12-1-99; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08

411-070-0465

Uniform Chart of Accounts

The following account definitions will be used to classify the dollar amounts on the Nursing Facility Financial Statement (NFFS). The account

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balance is to be reported in whole dollars under the facility gross column on the NFFS and referenced by the providers' chart of accounts number. It is the provider's responsibility to ensure that the balances reported reconcile to their fiscal year statements and general ledger balances with any differences explained on Schedule A to Form SPD 35 or SPD 35A. The provider is responsible for making adjustments to these accounts for non-allowable items and amounts using the adjustment column to arrive at the net allowable balance. Each adjustment is to be explained on Schedule A to Form SPD 35 or SPD 35A.

(1) **CURRENT ASSETS** — The following accounts include cash and other assets reasonably expected to be realized in cash or sold, or consumed during the normal nursing facility operating cycle, or within one year when the operating cycle is less than one year.

(a) 101 — Cash on Hand — This account balance represents the amount of cash on hand for petty cash funds.

(b) 102 — Cash in Bank — This account balance represents the amount in a bank checking account.

(c) 103 — Cash in Savings — This account balance represents the amount accumulated in a savings account.

(d) 104 — Resident Trust Account — This account balance represents the amount of resident funds entrusted to the provider and held as cash on hand in the bank.

(e) 109 — Accounts Receivable — This account balance represents the amounts due from or due on behalf of all residents at the end of the fiscal period being reported.

(f) 110 — Notes Receivable — This account balance represents the current balance of amounts owed to the facility (payee) that are covered by a written promise to pay at a specified time, and is signed and dated by the maker.

(g) 111 — Allowance for Doubtful Accounts — This account balance represents amounts owed to the facility and estimated to be uncollectible.

(h) 115 — Employee Advances — This account balance represents amounts paid in advance to employees for salaries or wages that will be liquidated in the next payroll cycle following the closing date of the financial statement.

(i) 120 — Inventory — This account balance represents the cost value of inventory on hand at the end of the reporting period.

(j) 125 — Prepaid Expenses — This account balance represents the cost value of paid expenses not yet incurred covering regularly recurring costs of operation like rent, interest, and insurance.

(k) 149 — Other Current Assets — This account balance comprises all current assets not identified above. Each item in this account, including short-term savings certificates, must be explained on Schedule A to Form SPD 35 or SPD 35A.

(2) **NON-CURRENT ASSETS** — The balances of the following accounts represent assets not recognized as current.

(a) 151 — Land — This account balance represents the acquisition cost and other costs, like legal fees and excavation costs that are incurred to put the land in condition for its intended use.

(b) 153 — Building(s) — This account balance represents the acquisition cost of permanent structures and property owned by the provider used to house residents. It includes the purchase or contract price of all permanent buildings and fixed equipment attached to and forming a permanent part of the building(s).

(c) 154 — Accumulated Depreciation — This account balance represents the accumulation of provisions made to record the expiration in the building(s) life attributable to wear and tear through use, lapse of time, obsolescence, inadequacy or other physical or functional cause. The straight line method is the only recognized depreciation method for cost reimbursement.

(d) 155 — Land Improvements — This account balance represents the acquisition cost of permanent improvements, other than buildings that add value to the land. It includes the purchase or contract price.

(e) 156 — Accumulated Depreciation — This account is of the same nature and is used in the same manner as Account 154.

(f) 157 — Building Improvements — This account balance represents the acquisition cost of additions or improvements that either add value to or increase the usefulness of the building(s). It includes the purchase or contract price.

(g) 158 — Accumulated Depreciation — This account is of the same nature and is used in the same manner as Account 154.

(h) 161 — Equipment — This account balance represents the acquisition cost of tangible property of a permanent nature, other than land, building(s) or improvements, used to carry on the nursing facility operations. It includes the purchase or contract price.

(i) 162 — Accumulated Depreciation — This account is of the same nature and is used in the same manner as Account 154.

(j) 165 — Leasehold Improvements — This account balance represents the acquisition cost of any long-lived improvements or additions to the property being leased that will belong to the owner (lessor) at the expiration of the lease.

(k) 166 — Accumulated Amortization — This account is of the same nature and is used in the same manner as Account 154 except the cost of improvements or additions will be amortized over the lesser of the expected benefit life or the remaining life of the lease.

(l) 181 — Investments — This account balance represents the value of assets unrelated to the nursing facility operation. The detail of this account must be explained on Schedule A to Form SPD 35 or SPD 35A.

(m) 187 — Goodwill — This account balance represents the value of goodwill identified with the purchase of assets.

(n) 199 — Other — Non-Current Assets — This account balance comprises all non-current assets not identified above. Each item in this account, including long-term savings certificates, must be explained on Schedule A to Form SPD 35 or SPD 35A.

(3) **CURRENT LIABILITIES** — The balances of the following accounts are considered current liabilities.

(a) 201 — Accounts Payable — This account balance represents the liabilities for goods and services received but unpaid at the end of the reporting period.

(b) 202 — Accounts Payable — Resident Trust Account — This account balance represents the amount owed to residents for the cash entrusted to the facility in Account 104.

(c) 203 — Notes Payable — Other — This account balance represents the current portion of the amount owed by the facility that is covered by a written promise to pay at a specified time and is signed and dated by the facility (maker).

(d) 204 — Notes Payable to Owner — This account balance represents notes payable to the owner(s) and is of the same nature and is used in the same manner as Account 203.

(e) 205 — Accrued Interest Payable — This account balance represents the liabilities for interest accrued at the end of the reporting period but not payable until a later date.

(f) 207 — Other Accrued Payable — This account is of the same accrual nature and is used in the same manner as Account 205 and is to be explained in detail on Schedule A to Form SPD 35 or SPD 35A.

(g) 208 — Payroll Payable — This account balance is the accrued payroll, less withheld payroll taxes and other deductions, payable to employees at the end of the reporting period.

(h) 217 — Payroll Tax Payable — This account balance is the employer's share of accrued payroll taxes payable at the end of the reporting period.

(i) 218 — Payroll Deductions Payable — This account balance is the employee's share of accrued payroll taxes withheld from the employer's gross pay payable at the end of the reporting period.

(j) 219 — Deferred Income — This account balance represents the liability for revenue collected in advance.

(k) 229 — Other Current Liabilities — This account balance comprises all current liabilities not identified above. The nature and purpose of amounts included in this account must be explained on Schedule A to Form SPD 35 or SPD 35A.

(4) **LONG-TERM LIABILITIES** — The balances of the following accounts are considered long-term liabilities.

(a) 231 — Long-Term Mortgage Payable — This account balance represents the amount owed by the facility that is secured by a mortgage or other contractual agreement providing for conveyance of property at a future date.

(b) 233 — Long-Term Notes Payable — This account is of the same nature and is used in the same manner as Account 203 except the liability extends beyond one year.

(c) 234 — Long-Term Notes Payable Owner — This account is of the same nature and is used in the same manner as Account 204 except the liability extends beyond one year.

(d) 249 — Other Long-Term Liabilities — This account comprises all long-term liabilities not identified above. The amount and nature of items in this account must be explained on Schedule A to Form SPD 35 or SPD 35A.

(5) **NET WORTH** — The balances of the following accounts represent the amount by which the facility's assets exceed its liabilities.

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(a) 251 — Capital Stock — This account balance represents the amount of cash or property received in exchange for the corporation's capital stock.

(b) 255 — Retained Earnings — This account balance represents the amount of capital resulting from retention of corporate earnings.

(c) 261 — Capital Account — This account balance represents the book value of the proprietor or partner(s) equity in the facility.

(d) 265 — Drawing Account — This account balance represents the owners withdrawals of funds during the reporting period that were not paid as part of the payroll.

(e) 290 — Net Profit (Loss) — This account balance is the facility's revenue minus expenses for the reporting period.

(6) RESIDENT REVENUE — These accounts include room and board revenue and related room and board contractual adjustments including revenue from bed hold days for routine service charges exclusive of ancillary charges. Routine service charges are to be reported in the following accounts:

(a) 301 — Private Resident — Complex Medical Needs — This account includes room and board revenue for complex medical needs routine private resident services including health maintenance organization (HMO) payer source for private residents. These are private pay residents whose medical needs correspond to the Medicaid complex medical needs criteria.

(b) 303 — Private Resident — Basic Rate — This account includes room and board revenue for basic rate routine private resident services including HMO payer source for private residents. These are private pay residents whose medical needs correspond to the Medicaid basic rate needs criteria.

(c) 304 — Private Resident — Assisted Living Facilities/Residential Care Facilities — This account includes room and board revenue for other than private complex medical needs and basic rate, non long-term residents and is to be explained on Schedule A to Form SPD 35 or SPD 35A.

(d) 311 — Medicaid Resident — Complex Medical Needs — This account includes room and board revenue from all sources for complex medical needs Medicaid residents.

(e) 312 — Medicaid Resident — Pediatric — This account includes room and board revenue from all sources for pediatric Medicaid residents.

(f) 313 — Medicaid Resident — Basic Rate — This account includes room and board revenue from all sources for basic rate Medicaid residents.

(g) 314 — Medicaid — Assisted Living Facilities/Residential Care Facilities — This account includes room and board revenue for Medicaid, non long-term resident services from all sources other than NF Payment Categories 1, basic rate, complex medical needs and pediatric and is to be explained on Schedule A to Form SPD 35 or SPD 35A.

(h) 315 — Medicaid — HMO — This account includes room and board revenue from all sources for Medicaid-HMO resident services.

(i) 316 — Medicaid — Out of State — This account includes room and board revenue from all sources for non-Oregon Medicaid resident services.

(j) 318 — Medicare Resident — This account includes room and board revenue from all sources for Medicare resident services.

(k) 319 — Other Governmental Resident — This account includes room and board revenue from all sources for Veteran Affairs and other governmental program resident services other than Medicaid or Medicare and is to be explained on Schedule A to Form SPD 35 or SPD 35A.

(7) ANCILLARY REVENUE — These accounts include revenue for professional and non-professional services and supplies not included in section (6) of this rule. Revenue other than that described above must be reported as gross revenue and related expenses to be reported in the appropriate expense accounts. Ancillary service charges and ancillary contractual adjustments are to be reported in the following accounts:

(a) 321 — Nursing Supplies — This account includes revenue from the sale of nursing supplies or services.

(b) 322 — Oxygen — This account includes revenue from the sale of oxygen (gas) and concentrator supplies.

(c) 323 — Prescription Drugs — This account includes revenue from the sale of prescription drugs.

(d) 324 — Laboratory — This account includes revenue from laboratory services provided.

(e) 345 — X-Ray — This account includes revenue from X-Ray services.

(f) 326 — Equipment Rental — This account includes revenue from equipment rental.

(g) 330 — Physical Therapy — This account includes revenue from physical therapy services provided.

(h) 331 — Speech Therapy — This account includes revenue from speech therapy services.

(i) 332 — Occupational Therapy — This account includes revenue from occupational therapy services.

(j) 341 — Personal Purchases — This account includes revenue from residents for personal purchases.

(k) 342 — Barber and Beauty — This account includes revenue from residents for barber and beautician services.

(l) 349 — Other Ancillary — Items and amounts included in this account must be described on Schedule A to Form SPD 35 or SPD 35A.

(m) 398 — Contractual Adjustments — This is a revenue offset account and includes all contractual adjustments to resident revenue and ancillary revenue.

(8) OTHER REVENUE — These accounts include other revenue, exclusive of resident and ancillary revenue. The intent is for revenue to be reported in gross and the related expenses reported in the appropriate expense accounts. Other revenues are classified as follows:

(a) 901 — Grants — This account includes revenue amounts received in the reporting period from public and privately funded grants and awards.

(b) 902 — Donations — This account includes donations in the form of cash or goods and services received during the reporting period.

(c) 911 — Interest — This account includes revenue from any interest bearing note, bank account, or certificate.

(d) 912 — Staff & Guest Food Sales — This account includes revenue from facility food sales to individuals other than residents of the facility.

(e) 913 — Vending Sales — This account includes revenue from vending machines or for resale items not reported in Accounts 813 and 351.

(f) 914 — Television and Telephone Revenue — This account includes revenue from television and telephone sales to residents of the facility.

(g) 915 — Independent Senior Housing — This account includes revenue from any other apartment and continuing care retirement community housing.

(h) 916 — Hospital Revenue — This account includes revenue from hospital operations not related to the nursing facility.

(i) 918 — Nursing Aide Training — This account is for reporting all revenue associated with OAR 411-070-0470, Nursing Assistant Training and Competency.

(j) 919 — Miscellaneous Other Revenue — Items and amounts, including revenues for Mental Health revenues received from local governments, and Workers Compensation refunds, included in this account are to be described on Schedule A to Form SPD 35 or SPD 35A.

(9) PROPERTY EXPENSES — These accounts are for reporting property expenses.

(a) 452 — Interest — This account is for reporting all interest expense related to the acquisition of fixed assets, adjusted for historical cost limitations.

(b) 453 — Rent Building — This account is for reporting all building rent or lease expenses.

(c) 454 — Leased Equipment — This account is for reporting equipment rental and lease expense for all equipment used in the administrative and general and other operating expense categories.

(d) 455 — Depreciation — Building — This account is for reporting depreciation, for the reporting period, associated with assets capitalized in Account 153.

(e) 456 — Depreciation — Land Improvement — This account is for reporting depreciation, for the reporting period, associated with assets capitalized in Account 155.

(f) 457 — Depreciation — Building Improvement — This account is for reporting depreciation, for the reporting period, associated with assets capitalized in Account 157.

(g) 458 — Depreciation — Equipment — This account is for reporting depreciation, for the reporting period, associated with assets capitalized in Account 161.

(h) 459 — Amortization — Leasehold Improvement — This account is for reporting amortization, for the reporting period, associated with assets capitalized in Account 165 and Account 166.

(i) 461 — Miscellaneous — Property — This account is for reporting other property costs, such as amortization of organizational costs, and items of equipment less than \$1,000 that are for general use, such as privacy curtains and blinds.

(10) ADMINISTRATIVE AND GENERAL EXPENSES — These accounts report expenses for administration of the facility and the business office, and items not readily associated with other departments.

ADMINISTRATIVE RULES

(a) 411 — Compensation — Administrator — This account is for reporting all the compensation received by the licensed administrator of the facility. Compensation includes salary, bonuses, auto, moving, travel and all other allowances paid directly or indirectly by the facility.

(b) 412 — Compensation — Assistant Administrator — This account is to be used for reporting all compensation of the individual who is identified as, and has the specific duties of, Assistant Administrator.

(c) 413 — Compensation — Bookkeeper — This account is for reporting all the compensation received by the facility bookkeeper, controller and chief financial officer.

(d) 415 — Compensation — Other Administrative — This account is for reporting all of the compensation received by administrative, clerical, secretarial, accounting, central supply, in-service director and personnel.

(e) 418 — Purchased Services — Administrative — This account is for reporting all non-employee services required in the administrative operations of the facility.

(f) 440 — Payroll Taxes — Administrative — This account is for reporting all of the employer's portion of payroll taxes, including Federal Insurance Contributions Act (FICA) tax, unemployment and other payroll taxes not withheld from the employee's pay for administrative employees.

(g) 441 — Worker's Compensation — Administrative — This account is for reporting the employer's portion of worker's compensation insurance not withheld from the employee's pay for administrative employees.

(h) 442 — Employee Benefits — Administrative — This account is for reporting all employer paid employee benefits. These benefits include group insurance, facility picnics, prizes, gifts, and holiday dinners. Established child care benefits are to be included when they are accounted for separately and do not relate directly to a compensation account for administrative employees.

(i) 443 — Employee Paid Time Off — Administrative — This account is for reporting established vacation, holiday and sick pay programs for administrative employees.

(j) 420 — Vending Expense — This account is for reporting expenses of non-medical, non-resident service items sold to the residents and non-residents including items sold through vending machines.

(k) 423 — Personal Purchase — This account is for reporting all expenditures for personal items purchased for individual residents.

(l) 425 — Office Supplies — This account is for reporting expenses of all office supplies except those chargeable to Account 863. Materials include stationery, postage, printing, bookkeeping supplies, and office supplies.

(m) 426 — Communications — This account is for reporting all telephone, internet access, communication, and paging system charges.

(n) 427 — Travel — This account is for reporting all transportation costs and mileage reimbursement associated with vehicles used for resident services or resident recreation, exclusive of insurance and depreciation and for reporting all other travel expenses such as lodging and meals for conferences, conventions, workshops, or training sessions.

(o) 429 — Advertising — Help Wanted — This account is for reporting all help wanted advertising expense.

(p) 430 — Advertising — Promotional — This account is for reporting all expenditures of the facility related to promotional advertising including yellow page advertising.

(q) 431 — Public Relations — This account is for reporting all expenditures related to public relations.

(r) 432 — Licenses, Dues & Subscriptions — This account is for reporting all fees for facility licenses; dues in professional associations; and costs of subscriptions for newspapers, magazines, and periodicals provided for resident and staff use.

(s) 433 — Accounting & Related Data Processing — This account is for reporting all accounting, payroll, and other data and report processing expenses.

(t) 435 — Legal Fees — This account is for reporting all legal fees and expenses. Legal fees must be reported in conformance with OAR 411-070-0359(1)(t).

(u) 436 — Management Fees — This account is for reporting all management fees charged to the facility, including management salaries and benefits at the home office.

(v) 437 — Insurance — Liability — This account is for reporting all liability insurance expenses, including employee dishonesty, Board of Director, and umbrella coverage.

(w) 439 — Other Interest Expense — This account is for reporting interest expense not attributable to the purchase of the facility and equipment.

(x) 444 — Bad Debts — This account is for reporting the expense recorded from recognizing a certain portion of accounts receivable as uncollectible.

(y) 445 — Education & Training — This account is for reporting registration, tuition, materials, and manual costs for training the staff included in the administrative and general expense category.

(z) 446 — Contributions — This account is for reporting the expense of any gift or donation.

(aa) 449 — Miscellaneous — This account is for reporting general administrative operating expenses not specifically included in other general administrative operating expense accounts. Entries must be explained in detail on Schedule A to Form SPD 35 or SPD 35A.

(bb) 450 — Long Term Care Facility Tax, effective 07/01/2003.

(11) OTHER OPERATING SUPPORT EXPENSES — The following accounts are included in this category.

(a) 511 — Compensation — Other Operating Employees — This account is for reporting all compensation received by employee(s) responsible for providing facility repair and maintenance, dietary, laundry and housekeeping services.

(b) 540 — Payroll Taxes — Other Operating — This account is for reporting all of the employer's portion of payroll taxes, including FICA, unemployment and other payroll taxes not withheld from the employee's pay for other operating employees.

(c) 541 — Worker's Compensation — Other Operating — This account is for reporting the employer's portion of worker's compensation insurance not withheld from the employee's pay for other operating employees.

(d) 542 — Employee Benefits — Other Operating — This account is for reporting all employer paid employee benefits. These benefits include group insurance, facility picnics, prizes, gifts, and holiday dinners. Established child care benefits are to be included when they are accounted for separately and do not relate directly to a compensation account for other operating employees.

(e) 543 — Employee Paid Time Off — Other Operating — This account is for reporting established vacation, holiday and sick pay programs for other operating employees.

(f) 551 — Purchased Services — Maintenance — This account is for reporting all non-employee services required in maintenance operations.

(g) 552 — Purchased Services — Dietary — This account is for reporting all non-employee services required in dietary operations including dietary consulting expenses.

(h) 553 — Purchased Services — Laundry — This account is for reporting all non-employee services in laundry operations.

(i) 554 — Purchased Services — Housekeeping — This account is for reporting all non-employee services required in housekeeping operations.

(j) 510 — Real Estate & Personal Property Taxes — This account is for reporting real estate and personal property tax expenses for the facility.

(k) 512 — Insurance — Property & Auto — This account is for reporting all insurance expenses other than liability insurance reportable in Account 437, and employee insurance expenses.

(l) 513 — Cable Television — This account is for reporting all cable and satellite television expenses.

(m) 514 — Heat & Electricity — This account is for reporting all facility heating and lighting expenses.

(n) 515 — Water, Sewer & Garbage — This account is for reporting all water, sewer and garbage expenses.

(o) 516 — Maintenance Supplies & Services — This account is for reporting all expenses required for building and equipment maintenance and repairs including preventative maintenance and not capitalized.

(p) 526 — Dietary Supplies — This account is for reporting the expense of all supplies, dishes and utensils, and non-capitalized equipment utilized within this department, exclusive of food.

(q) 532 — Linen and Bedding — This account is for reporting the expense of all linen and bedding utilized within the facility.

(r) 536 — Laundry Supplies — This account is for reporting the expense of all supplies utilized by the laundry.

(s) 546 — Housekeeping Supplies — This account is for reporting the expense of all supplies utilized to provide housekeeping services.

(t) 549 — Miscellaneous — Other Operating — This account is for reporting other operating support expenses not specifically included in an identified account. Entries must be explained in detail on Schedule A to Form SPD 35 or SPD 35A.

(12) FOOD — 522 Food — This account is for reporting all food products and supplements used in food preparations including dietary supplements.

ADMINISTRATIVE RULES

(13) **DIRECT CARE COMPENSATION** — These accounts include compensation used in providing direct resident services.

(a) 640 — **Payroll Taxes — Direct Care** — This account is for reporting the employer's entire portion of payroll taxes, including FICA, unemployment and other payroll taxes not withheld from the employee's pay for direct care employees.

(b) 641 — **Worker's Compensation — Direct Care** — This account is for reporting the employer's portion of worker's compensation insurance not withheld from the employee's pay for direct care employees.

(c) 642 — **Employee Benefits — Direct Care** — This account is for reporting all employer paid employee benefits. These benefits include group insurance, facility picnics, prizes, gifts, and holiday dinners. Established child care benefits are to be included when they are accounted for separately and do not relate directly to a compensation account for direct care employees.

(d) 643 — **Employee Paid Time Off — Direct Care** — This account is for reporting established vacation, holiday and sick pay programs for direct care employees.

(e) 651 **Compensation — Director of Nursing Services** — This account is for reporting all compensation received by employee(s) responsible for directing the nursing services of the facility.

(f) 652 **Compensation — Registered Nurses** — This account is for reporting all compensation received by Registered Nurse employees of the facility who provide nursing services, other than the Director of Nursing Services, but including Resident Care Managers. If a Registered Nurse provides nursing services part of the time and carries out other duties the rest of the time, this employee's compensation will be allocated to the appropriate account based on time spent on each activity.

(g) 653 **Compensation — Licensed Practical Nurses** — This account is for reporting all compensation received by Licensed Practical or Licensed Vocational Nurse employees of the facility who provide nursing services. If a Licensed Practical Nurse provides nursing services part of the time and carries out other duties the rest of the time, this employee's compensation will be allocated to the appropriate account based on time spent on each activity.

(h) 654 — **Compensation — Certified Medical Aides** — This account is for reporting all compensation received by certified medical aides.

(i) 655 — **Compensation — Certified Nursing Aides and Restorative Aides** — This account is for reporting all compensation received by certified nursing aides and restorative aides not part of the physical therapy department.

(j) 656 **Compensation — Other Nursing Employees** — This account is for reporting all compensation received by non-licensed, non-professional employees who provide nursing services. If such employees provide nursing services part of the time and carry out other duties the rest of the time, these employees' compensation will be allocated to the appropriate account based on time spent on each activity.

(k) 661 — **Compensation — Activities Employees** — This account is for reporting all compensation of employees engaged in the planning and carrying out of resident recreational activities.

(l) 662 — **Compensation — Social Workers** — This account is for reporting all compensation of social workers and assistants employed to provide social service activities.

(m) 663 — **Compensation — Medical Records** — This account is for reporting all compensation of medical records employees.

(n) 664 — **Compensation — Rehabilitation Employees** — This account is for reporting all compensation of occupational and physical therapists, and technicians, and therapy aides employed to provide resident rehabilitation activities or services. This account will be subdivided in accordance with OAR 411-070-0359(3)(g) on Schedule A to Form SPD 35 or SPD 35A.

(o) 671 — **Compensation — Religious Employees** — This account is for reporting all compensation for individuals employed who provide religious services.

(p) 672 — **Compensation — Hospital Employees** — This account is for reporting the expense attributable to hospital employees not related to nursing facility long-term care.

(q) 681 — **Compensation — Other Employees** — This account is for reporting all compensation for dentists, barbers, beauticians, research, and other non-identified personnel employed by the facility and must be explained in detail on Schedule A to Form SPD 35 or SPD 35A.

(r) 752 — **Purchased Services — Registered Nurses** — This account is for reporting the expense attributable to employment agencies that provide part-time registered nurse employees on a fee and salary basis.

(s) 753 — **Purchased Services — Licensed Practical Nurses** — This account is for reporting the expense attributable to employment agencies that provide part-time licensed practical nurse employees on a fee and salary basis.

(t) 754 — **Purchased Services — Certified Medical Assistants** — This account is for reporting the expense attributable to employment agencies that provide part time certified medical assistant employees on a fee and salary basis.

(u) 755 — **Purchased Services — Certified Nursing Assistants & Restorative Aides** — This account is for reporting the expense attributable to employment agencies that provide part-time certified nursing assistant and restorative aide employees on a fee and salary basis.

(v) 756 — **Purchased Services — Other Nursing** — This account is for reporting the expense attributable to employment agencies that provide part-time other nursing employees on a fee and salary basis, and must be explained in detail on Schedule A to Form SPD 35 or SPD 35A.

(14) **DIRECT CARE SUPPLIES** — These accounts include supplies and services used in providing direct resident services.

(a) 811 — **Education & Training** — This account is for reporting registration, tuition, and book expense associated with education and training of direct care personnel.

(b) 812 — **Nursing Assistant (Aide) Training and Competency Evaluation** — This account is for reporting all expenses associated with OAR 411-070-0470 (which excludes salaries of nurse aide trainees).

(c) 816 — **Nursing Supplies** — This account is for reporting all medical supplies consumed by this department, exclusive of oxygen, used in providing direct care services.

(d) 819 — **Physician Fees** — This account is for reporting all expenditures for physician treatment, services and evaluation of the resident.

(e) 826 — **Oxygen Supplies** — This account is for reporting the expense of all oxygen (gas) and concentrator rentals.

(f) 836 — **Pharmacy Supplies** — This account is for reporting the expense of all materials utilized in the facility pharmacy operation.

(g) 837 — **Drugs and Pharmaceuticals — Nursing Home** — This account is for reporting all expenditures meeting the criteria of 411-070-0085(2)(j).

(h) 838 — **Drugs & Pharmaceuticals — Prescriptions** — This account is for reporting all expenditures for legend drugs and biologicals prescribed by a licensed physician and not meeting the criteria of 411-070-0090.

(i) 846 — **Laboratory Supplies & Fees** — This account is for reporting the expense of all materials utilized in the facility laboratory operation and fees paid for non-employee pathologist and laboratory technician services.

(j) 856 — **X-Ray Supplies & Fees** — This account is for reporting the expense of all materials utilized in the facility X-Ray department and fees for non-employee radiologists and X-Ray technician services.

(k) 859 — **Equipment Rental — Chargeable** — This account is for reporting chargeable equipment rental costs for equipment used in direct care services cost categories.

(l) 861 — **Barber & Beauty** — The cost of non-employee barber and beautician services will be reported in this account.

(m) 863 — **Medical Records Supplies** — This account is restricted to materials and software used in resident charting, including data processing for medical records.

(n) 866 — **Activities & Recreational Supplies** — This account is for reporting the expense of entertainers, and all materials used in providing resident recreational activities. Related transportation is to be reported in Account 427.

(o) 876 — **Rehabilitation Supplies & Fees** — This account is for reporting the expense of all materials used in providing occupational and physical therapy including fees for non-employee related services. This account must be subdivided in accordance with OAR 411-070-0359(3)(I) on Schedule A to Form SPD 35 or SPD 35A.

(p) 882 — **Utilization Review** — This account is for reporting the expenses of all non-employee fees associated with utilization review.

(q) 889 — **Consultant Fees** — This account is for reporting all expenditures for consultant fees, including travel and lodging, exclusive of dietary and management consultants and must be explained in detail on Schedule A to Form SPD 35 or SPD 35A.

(r) 899 — **Miscellaneous — Expenses reported in this account must be explained in detail on Schedule A to Form SPD 35 or SPD 35A.**

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: AFS 19-1978, f. & ef. 5-1-78; AFS 29-1978, f. 7-28-78, ef. 8-1-78; Renumbered from 461-017-0460, AFS 69-1981, f. 9-30-81, ef. 10-1-81; SS 2-1981, f. 12-31-81, ef. 1-1-82; SSD 10-1986, f. & ef. 7-1-86; SSD 11-1986, f. 8-29-86, ef. 9-1-86; SSD 10-1989, f. 6-30-89, cert. ef. 7-1-89; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 8-1991, f. & cert. ef. 4-1-91; SSD 14-

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1991(Temp), f. 6-28-91, cert. ef. 7-1-91; SSD 18-1991, f. 9-27-91, cert. ef. 10-1-91; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 6-1995, f. 6-30-95, cert. ef. 7-1-95; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 11-2004(Temp), f. & cert. ef. 5-28-04 thru 11-24-04; SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08

Rule Caption: Nursing Facility Licensing (Criminal History Checks, Residents' Rights, Physician Services and Notice Requirements).

Adm. Order No.: SPD 3-2008

Filed with Sec. of State: 3-6-2008

Certified to be Effective: 3-6-08

Notice Publication Date: 2-1-2008

Rules Amended: 411-085-0200, 411-085-0310, 411-086-0200, 411-088-0070

Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is permanently amending:

OAR 411-085-0200 (Licensee, Employees, Consultants) to require nursing facilities to conduct a criminal history check on all employees as required under OAR chapter 407, division 007;

OAR 411-085-0310 (Residents' Rights: Generally) to include the new residents' rights as required by House Bill 3093;

OAR 411-086-0200 (Physician Services) to allow a nurse practitioner to perform all non-Medicare physician visits; and

OAR 411-088-0070 (Notice Requirements) to reflect the requirements outlined in the administrative hearings statutes and rules.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-085-0200

Licensee, Employees, Consultants

(1) LICENSEE. The licensee will be responsible for the operation of the facility and the quality of care rendered in the facility.

(2) EMPLOYEES.

(a) Licensure, Registration, Certification Required. All health care personnel working in the facility must be licensed, registered, or certified as required. Documentation thereof is required for all such employees.

(b) Reference Check. The licensee must check and document references for all prospective employees prior to employment.

(c) Job Description. All employees' duties must be defined in writing and maintained in the facility. All employees must be instructed in and perform the duties assigned.

(d) Nursing Personnel. Before employing a registered nurse, licensed practical nurse or nursing assistant, the licensee must contact the Oregon State Board of Nursing and inquire whether the person is licensed or certified by the Board and whether there has been any disciplinary action by the Board against the person or any substantiated abuse findings against a nursing assistant.

(e) The licensee must assure a criminal history check is completed on all employees, in accordance with OAR chapter 407, division 007, (Criminal History Checks). A licensee must not employ any individual who is determined to be ineligible to provide services as outlined in OAR chapter 407, division 007.

(3) PROHIBITION OF EMPLOYMENT. The facility must not employ or retain in employment any of the following:

(a) Any person found responsible for abusing, neglecting or mistreating a person receiving long-term care services in a final administrative action that is not under appeal or in a court of law;

(b) Any nursing assistant against whom a finding of resident abuse has been entered into the registry maintained under ORS 678.150; or

(c) Any person who is known or reasonably should be known to the facility to be abusive or to have been abusive.

(4) CONSULTANTS. When consultants are required, a facility will require consultants to file written reports at least quarterly. These reports must include date(s) of visit(s), length of time spent on premises, action taken on previous reports, problems identified, recommendations, staff members contacted, services performed, distribution of reports, and date mailed or delivered. The facility must maintain these quarterly reports in the facility.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055, 441.637 & 441.679

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 3-2008, f. & cert. ef. 3-6-08

411-085-0310

Residents' Rights: Generally

The facility must protect, encourage and assist the resident in exercising the rights identified in OAR 411-085-0300 – 411-085-0350. Each resident and the resident's legal representative, as appropriate, have the right to:

(1) Be encouraged and assisted while in the facility to exercise rights as a citizen or resident of Oregon and of the United States.

(2) Be fully informed, orally and in writing in a language the resident understands of these rights, and of all facility guidelines for resident conduct and responsibilities. This must be documented by the resident's written acknowledgment, prior to or at the time of admission.

(3) Be fully informed, prior to or at the time of admission and during stay, of services available in the facility, including Medicaid and Medicare certification status and the potential consequences thereof to the resident. The facility must assist the resident to apply for Medicaid and Medicare benefits, by ensuring that the resident is able to contact the local Medicaid agency, whenever a resident may be eligible.

(4) Be fully informed of his/her total health status, including but not limited to medical status. The resident must be informed of the right to choose his/her own physician and to be fully informed in advance of any changes in care or treatment. The facility staff must encourage the resident to exercise the right to make his/her own decisions and fully participate in care and care planning unless the resident has been found legally incapable of doing so.

(5) Refuse any medication, treatment, care or any participation in experimental research unless the resident has been found legally incapable of doing so.

(6) Be encouraged, but not required, to perform activities for therapeutic purposes when identified in the resident's care plan.

(7) Be free from verbal, sexual, mental and physical abuse, corporal punishment and involuntary seclusion. Chemical and physical restraints may only be used to ensure the physical safety of the residents and may not be used for discipline or convenience. Except as provided in OAR 411-086-0140, restraints may only be used on order of a physician.

(8) Be transferred or discharged only in accordance with the Seniors and People with Disabilities Division transfer and discharge rules in OAR chapter 411, division 088.

(9) Not be reassigned to a new room within the facility without cause and without adequate preparation for the move in order to avoid harmful effects.

(a) Involuntary reassignment of rooms may only be made after reasonable advance notification (oral or written) and preparation. Unless there is clear and adequate written justification for a shorter time frame, "reasonable advance notification" means no less than 14 days.

(b) Residents must not be involuntarily reassigned rooms within the facility if such reassignment would have a significant adverse impact on the resident's medical or psychological status.

(c) Moving residents on the basis of source of payment is not just cause for intrafacility transfers.

(d) Residents and significant others must receive prior notice of any move and any change in roommate assignment.

(10) Voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of restraint, interference, coercion, discrimination, or reprisal. The facility staff must listen to and act promptly upon grievances and recommendations received from residents and family groups.

(11) Be treated with consideration, respect and dignity and assured complete privacy during treatment and when receiving personal care.

(12) Associate and communicate privately with persons of the resident's choice, to send and receive personal mail unopened and to have regular access to the private use of a telephone.

(13) Be provided privacy for visits when requested, including meetings with other residents and family groups.

(14) Have clinical and personal records kept confidential. Copies of the records must not be transferred outside the facility unless the resident is transferred, or examination of the records is required by the attending physician, the third party payment contractor, the Seniors and People with Disabilities Division, Type B Area Agency on Aging, or the Long Term Care Ombudsman. Nothing in this rule is intended to prevent a resident from authorizing access to the resident's clinical and personal records by another person.

(15) Promptly inspect all records pertaining to the resident.

(16) Purchase photocopies of records pertaining to the resident. Photocopies requested by the resident must be promptly provided, but in no

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case require more than two business days (days excluding Saturdays, Sundays and state holidays).

(17) Participate in social, religious, and community activities at the discretion of the resident.

(18) Keep and use personal clothing and possessions as space permits unless to do so infringes on other residents' rights. The resident must be permitted to have a lockable storage space for personal property. Both the resident and facility management may have keys.

(19) Be free of retaliation. After the resident, or the resident's legal representative, has exercised rights provided by law or rule, neither the facility nor any person subject to the supervision, direction, or control of the facility may retaliate by:

(a) Increasing charges or decreasing services, rights or privileges;

(b) Threatening to increase charges or decrease services, rights or privileges;

(c) Taking or threatening any action to coerce or compel the resident to leave the facility; or

(d) Abusing, harassing, or threatening to abuse or harass a resident.

(20) Not be required to sign any contract or agreement that purports to waive any resident's right, including the right to collect payment for lost or stolen articles.

(21) Be fully informed of the facility policy on possession of firearms and ammunition within the facility.

(22) Receive care from facility staff trained to provide care that is specific to the resident's disease or medical condition.

(23) Receive a modified or special diet that meets the specific requirements of the resident's disease or medical condition.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.055, 441.600, 441.610, 441.615 & 441.700

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SDDS 13-1999, f. 12-30-99, cert. ef. 1-1-00; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 3-2008, f. & cert. ef. 3-6-08

411-086-0200

Physician Services

(1) MEDICAL DIRECTOR. Each nursing facility shall have a physician medical director designated in writing. The medical director shall:

(a) Serve on the Quality Assessment and Assurance Committee;

(b) Assist the facility to assure that adequate medical care is provided on a timely basis in accordance with OAR 411-085-0210 (Facility Policies); and

(c) Serve as attending physician for those residents who are not able to obtain services of another physician or ensure another physician is available to serve as attending physician.

(2) ATTENDING PHYSICIAN. Each resident shall be under the care of a physician who is responsible for the resident's medical care.

(a) Physician Assistant. The physician may delegate tasks to a physician assistant pursuant to ORS chapter 677 and rules adopted by the Board of Medical Examiners. The physician assistant must be under the direction and supervision of the resident's physician.

(b) Nurse Practitioner. The physician may delegate tasks to a nurse practitioner pursuant to ORS Chapter 678 and the rules adopted by the Oregon State Board of Nursing.

(c) Clinical Nurse Specialist in Gerontological Nursing. The physician may delegate responsibilities identified in section (4)(a) of this rule to a registered nurse who is certified by the American Nurses Association's Credentialing Center as a "Clinical Specialist in Gerontological Nursing." The specific tasks which may be delegated to the clinical nurse specialist are governed by the scope of practice as specified by the Oregon State Board of Nursing.

(d) Delegation.

(A) Except as provided in section (4) of this rule, a physician may delegate tasks to a physician assistant, nurse practitioner or clinical nurse specialist who is acting within the scope of practice as defined by Oregon law and who is under the supervision of a physician.

EXCEPTION: A physician may not delegate a task in a Medicare-certified facility when federal regulations specify the physician must perform it personally.

(B) The physician assistant, nurse practitioner or clinical nurse specialist substituting for physician visits as described in section (4)(a) of this rule may not be an employee of the nursing facility.

(3) MEDICATIONS AND TREATMENTS.

(a) Authorization. Physician's orders shall either be initially written and signed by the physician, nurse practitioner (NP) or physician assistant (PA), or given verbally or by telephone. If given verbally or by telephone, the orders shall be accepted only by a licensed nurse and must be written

and mailed to the physician, NP or PA within 72 hours to be signed and returned to the facility for filing in the resident's chart.

(b) Promptly Carried Out. All physician orders shall be promptly carried out unless inconsistent with the resident's expressed wishes.

(c) Orders Required. Medications and treatments shall be administered only on the order of a physician or a designee pursuant to ORS Chapters 677, 678, and 679.

(d) Standing Orders. Therapies and drugs not requiring prescription under ORS Chapter 689 may be ordered from standing orders of the attending physician, NP or PA. Therapies and drugs so ordered shall be reviewed and signed at least annually by the attending physician. Use of standing orders shall be authorized by licensed personnel and transcribed to the physician order form.

(4) PHYSICIAN VISITS.

(a) Frequency. Physician visits shall be according to resident's needs. The physician shall comply with Medicare or Medicaid requirements when applicable. Physician visits shall conform to the following schedule.

(A) Medicare Covered Stay. When Medicare is the primary payor source for a resident's stay, the resident must be seen by the physician at least every 30 days for the first 90 days after admission, then every 60 days thereafter. If authorized by the physician, every other visit after the first visit may be conducted by a physician's assistant, a clinical nurse specialist as specified in section (2) of this rule, or nurse practitioner.

(B) Medicare and/or Medicaid Certified Facilities. For residents in facilities which are certified for Medicare and/or Medicaid, and Medicare is not the primary payor source, each resident must be seen by the physician at least every 30 days for the first 90 days after admission, then every 60 days thereafter. If authorized by the physician, all visits may be conducted by a physician's assistant, a clinical nurse specialist as specified in section (2) of this rule, or nurse practitioner.

(C) Licensed Only Facilities. For residents in all facilities which are not certified for either Medicaid or Medicare, each resident shall be visited by the physician every 30 days for the first 90 days, then every 180 days thereafter. If authorized by the physician, all visits may be conducted by a physician's assistant, a clinical nurse specialist as specified in section (2) of this rule, or nurse practitioner.

(D) Timely Visit. A visit required pursuant to sections (4)(a)(A), (B), or (C) of this rule will be considered "timely" if it occurs not later than ten days after the date the visit was required.

(b) Assessments, Observation. The facility shall ensure a physician's assessment and determination of type of care needed is performed for each resident. The results and observations shall be recorded in the physician's progress notes at time of admission and at least annually thereafter.

(c) Policies. The facility shall establish policies to assure physician services are provided in all cases when the attending physician or the attending physician's alternate cannot or does not respond to the resident's needs.

(d) Failure to Visit. If the physician or physician designee fails to visit the resident according to resident's need, fails to respond to requests for assistance in resident's care, or fails to return verbal or telephone orders reduced to writing and forwarded to the physician by the facility, then the facility administrator shall ensure:

(A) Reasonable and repeated attempts are made and documented in the clinical record to get the physician or physician designee to visit resident or return signed orders;

(B) The medical director is notified and the Quality Assessment and Assurance Committee reviews the situation;

(C) The County Medical Society, State Medical Society, and the Board of Medical Examiners are notified in writing of the problem;

(D) The Seniors and People with Disabilities Division is notified in writing of the physician's failure to visit resident(s) or complete progress notes or signed orders; and

(E) The resident and the resident's significant other(s) are notified.

(e) Emergency Backup. Each facility shall provide for one or more physicians to be called in the event of a medical emergency. The names and telephone numbers of such physicians shall be posted at each nurses' station.

(5) DOCUMENTATION. All physician orders, physician visits, and responses thereto shall be promptly documented in the resident's clinical record.

Stat. Auth.: ORS 410.070, 410.090 & 441.055

Stats. Implemented: ORS 441.055 & 441.615

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 11-1992, f. 10-30-92, cert. ef. 11-1-92; SPD 3-2008, f. & cert. ef. 3-6-08

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411-088-0070

Notice Requirements

(1) NOTICE LENGTH:

(a) Any person transferred shall be provided a minimum of 30 days prior written notice (Exhibit 1) by the facility unless otherwise provided under this section.

(b) Any person may be transferred under OAR 411-088-0020(1)(b) (Life or Safety Threat) or 411-088-0020(1)(c) (Behavior Problem) with fewer than 30 days prior written notice (Exhibit 1) if the reason for such transfer constitutes an emergency. However, the facility shall give as much prior written notice (Exhibit 1) as the emergency permits.

(c) Any resident may be involuntarily transferred under OAR 411-088-0020(1)(d) (Medical Emergency) with no prior notice. However, the facility shall give notice (Exhibit 1 or 2) before giving the resident's bed to another person.

(d) Any person involuntarily transferred under OAR 411-088-0020(1)(g) (Post-Hospital Extended Care Services or Specialized Services) and cared for in the facility for less than 30 days may be transferred with fewer than 30 days' notice.

(A) In such cases the person shall be provided with notice no shorter than the length of current stay in the nursing facility.

(B) The notice shall be issued at the time of admission or as soon as the length of time for projected course of treatment can be estimated.

(C) Section (1)(d) of this rule does not apply if the resident had a right of readmission to the same facility prior to the hospital, surgical or emergency department services.

(e) Any resident involuntarily transferred under OAR 411-088-0020(1)(b) or (e) (Governmental Action) shall be provided a minimum of 14 days prior written notice (Exhibit 1).

(f) Any person denied the right of return or the right of readmission shall be notified by the facility immediately and provided written notice (Exhibit 2), mailed (registered or certified) or delivered in person within five days from date of request for return or readmission. A denial of right of return or readmission is allowable only if there is good cause to believe the resident lacks such right (see OAR 411-088-0050, 411-088-0060 and 411-088-0080).

(g) Any resident may voluntarily transfer from a facility. However, the facility shall provide notice (Exhibit 1) pursuant to this rule and shall maintain the signed consent form in the resident's medical record.

(2) NOTIFICATION LIST. The facility shall maintain and keep current in the resident's record the name, address and telephone number of the resident's legal representative, if any, and of any person designated by the resident or the resident's legal representative to receive notice of the transfer. The facility shall also record the name, address, and telephone number of any person who has demonstrated consistent concern for the resident if the resident has no one who is currently involved and who has been designated by the resident.

(3) NOTICE DISTRIBUTION. Notice shall be provided to:

(a) The resident or former resident, as appropriate;

(b) All persons required to be listed in the resident's medical record under section (2) of this rule;

(c) The local unit of the Seniors and People with Disabilities Division or Type B Area Agency on Aging. The notice does not need to be provided to the local unit of the Seniors and People with Disabilities Division or Type B Area Agency on Aging if the resident is private pay and the resident's stay(s) in the facility total 30 days or less; and

(d) The Long-Term Care Ombudsman if there is no one currently involved and designated by the resident.

(4) NOTICE FORMAT. Each notice shall be in the same format and shall have the same content as that provided in Exhibit 1 (Notice of Transfer) or Exhibit 2 (Denial of Readmission/Return) as appropriate.

(a) Each notice provided to residents, and persons required to be listed in the resident's medical record under section (2) of this rule shall be accompanied by a copy of the Seniors and People with Disabilities Division's brochure, "Leaving the Nursing Facility".

(b) If the person is a resident at the facility, the notice shall be served personally to the resident. All other notices required by this rule, including notices to persons who are no longer residents, must be either served personally or delivered by registered or certified mail.

(c) Both exhibits are incorporated by this reference as a part of this rule.

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

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 441.055 & 441.605

Stats. Implemented: ORS 441.055, 441.600 & 441.615

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; SSD 2-1995, f. & cert. ef. 2-15-95; SPD 3-2008, f. & cert. ef. 3-6-08

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

Rule Caption: Release of a Non-Mandatory Report Submitted to DMV.

Adm. Order No.: DMV 6-2008(Temp)

Filed with Sec. of State: 2-22-2008

Certified to be Effective: 2-22-08 thru 8-19-08

Notice Publication Date:

Rules Amended: 735-076-0005

Subject: The proposed amendment to OAR 735-076-0005 clarifies that a police report submitted to DMV to report a physical or mental impairment affecting driving ability or dangerous or unsafe driving behaviors is not confidential and a copy may be released to the person who is the subject of the report pursuant to a Public Records request.

Rules Coordinator: Lauri Salsbury—(503) 986-3171

735-076-0005

Reporting Requirements

(1) In order for DMV to process a non-mandatory report that indicates a person may no longer be qualified for driving privileges or may no longer be able to safely operate a motor vehicle, it must contain:

(a) The name of the person making the report, including a signature;

(b) The name and date of birth of the person being reported or a description of the person sufficient for DMV to identify the reported person from its records; and

(c) Sufficient information to give DMV reason to believe the person may no longer be qualified to hold a driver license, driver permit, or endorsement or may no longer be able to drive safely. For purposes of this rule, sufficient information includes but is not limited to:

(A) A physician or health care provider report of a physical or mental condition or impairment that is not reportable as required under OAR chapter 735 division 74 and includes a description of how the person's ability to drive safely may be affected;

(B) A report of a physical or mental condition or impairment, and a description of how the person's ability to safely operate a motor vehicle is affected; or a description of unsafe or dangerous driving behavior;

(C) A report by a police officer, physician or health care provider where a physical or mental condition or impairment is stated as a cause or possible cause of a crash or unsafe or dangerous driving behavior;

(D) A self-report on a driver's license/permit issuance, renewal or replacement application of a vision problem affecting driving and failure to pass a DMV administered vision screening;

(E) A self-report on a driver's license/permit issuance, renewal or replacement application of a mental or physical condition or impairment affecting the person's ability to drive safely;

(F) A self-report on a driver's license/permit issuance, renewal or replacement application of a problem condition involving alcohol, inhalants or controlled substances affecting the person's ability to drive safely; or

(G) A report of unsafe or dangerous driving behavior and DMV has reason to believe the driving behavior is likely to recur or similar driving behavior has previously been reported to DMV.

(2) All written documentation voluntarily submitted under this rule, including the name of the person submitting the documentation, will be kept confidential and not released to any person unless:

(a) The report was submitted by a police officer acting within the scope of his or her official duties;

(b) DMV determines the documentation, or any portion thereof, must be released pursuant to the Public Records Law, ORS 192.410 to 192.505, or the Attorney General or a court orders disclosure in accordance with the Public Records Law; or

(c) The documentation is determined by DMV to be necessary evidence in an administrative proceeding involving the suspension or cancellation of the person's driving privileges or right to apply for driving privileges.

(3) Before taking action, DMV may request more information from the person making the report if DMV has reason to believe the information provided is inaccurate or inadequate.

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

Stat. Implemented: ORS 807.340

Hist.: DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; DMV 6-2006, f. & cert. ef. 5-25-06; DMV 6-2008(Temp), f. & cert. ef. 2-22-08 thru 8-19-08

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Rule Caption: Early Renewal of Driver Licenses and Identification Cards for Persons Who are Deployed.

Adm. Order No.: DMV 7-2008(Temp)

Filed with Sec. of State: 2-22-2008

Certified to be Effective: 2-22-08 thru 8-19-08

Notice Publication Date:

Rules Amended: 735-062-0090

Subject: DMV shortened the time period within which a person may apply for renewal to four months prior to the expiration date, which created a hardship for some members of the Oregon National Guard or military reservists when the person's driver license or identification card expires while the person is deployed overseas. Because the length of deployment is just over 13 months, DMV is amending OAR 735-062-0090 to authorize renewal up to 14 months prior to expiration of the current license or identification card for a member of the Oregon National Guard or military reservist deployed in defense of our country.

Rules Coordinator: Lauri Salisbury—(503) 986-3171

735-062-0090

Renewal Driver Licenses and Identification Cards

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will renew the driver license of a person satisfying the requirements set forth in ORS 807.150.

(2) An applicant for the renewal of a driver license or identification card must provide DMV a verifiable SSN or Statement of No Social Security Number as described in OAR 735-062-0005.

(3) An applicant for the renewal of a driver license or identification card must present to DMV proof of identity and date of birth as set forth in OAR 735-062-0020 or 735-062-0021.

(4) An applicant for the renewal of a driver license or identification card that includes a change of residence address must present to DMV one of the proofs of residence address listed in OAR 735-062-0030 that shows the person's current residence address. (Current residence address is the residence address to be included on the license or identification card to be issued.)

(5) DMV may renew an unexpired driver license or identification card up to four months prior to the expiration date.

(6) Notwithstanding section (5) of this rule, DMV may renew an unexpired Oregon driver license or identification card of a person who is a member of the Oregon National Guard or a military reservist being deployed, up to 14 months prior to the expiration date.

(7) If a driver license has been expired more than one year, the applicant must re-apply for an original driver license and meet the requirements set forth in OAR 735-062-0000.

(8) An applicant for a renewal of a commercial driver license with a hazardous materials endorsement must retake and pass the hazardous materials knowledge test and meet the requirements set forth in OAR 735-062-0190 to retain the hazardous materials endorsement on the commercial driver license.

(9) An applicant for a renewal of a commercial driver license must meet the requirements set forth in OAR 735-074-0290.

(10) Before processing a driver license renewal, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS), or both, to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. Before processing a commercial driver license (CDL) renewal, DMV will make an inquiry to CDLIS to determine if the applicant has been issued a CDL in any other jurisdiction.

(11) If the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction, the applicant may not renew an Oregon driver license until the applicant submits a clearance letter that complies with OAR 735-062-0160 and shows the applicant's driving privileges are reinstated or otherwise valid in the other jurisdiction.

(12) Notwithstanding section (11) of this rule, DMV will renew the driving privileges of an applicant whose driving privileges are suspended, revoked, canceled or otherwise not valid in another jurisdiction if the only remaining reinstatement requirement in the other jurisdiction is proof of future financial responsibility.

(13) DMV will not renew an Oregon driver license or permit if the applicant has a current, valid Oregon identification card. To become eligible, the person must surrender the Oregon identification card before DMV will renew the Oregon driver license or permit. If the person's identifica-

tion card is lost or the person no longer has the identification card in his or her possession, the person must provide a statement attesting to this fact.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.012 & 807.040

Stats. Implemented: ORS 802.012, 802.540, 807.040 - 807.060, 807.100, 807.150, 807.400
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0009; MV 14-1992, f. & cert. ef. 10-16-92; MV 16-1992, f. & cert. ef. 12-16-92; DMV 11-1998, f. & cert. ef. 9-14-98; DMV 21-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 4-2007, f. 5-24-07, cert. ef. 6-5-07; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 7-2008(Temp), f. & cert. ef. 2-22-08 thru 8-19-08

Department of Veterans' Affairs Chapter 274

Rule Caption: Oregon Veterans' Emergency Financial Assistance Program.

Adm. Order No.: DVA 3-2008

Filed with Sec. of State: 2-22-2008

Certified to be Effective: 2-22-08

Notice Publication Date: 2-1-2008

Rules Amended: 274-012-0001, 274-012-0100, 274-012-0120

Subject: This OAR repeals and supercedes the Temporary OAR filed in January 7, 2008.

OAR 274-012-0001 is amended to reflect House Bill 2157 of the 2007 Regular Legislative Session which revised ORS 408.500 to include unmarried surviving spouse to the definition of "immediate family."

OAR 274-012-0100 is amended to clarify that the purpose of the Oregon Veterans' Emergency Financial Assistance Program is to provide one-time assistance to veterans and their immediate family.

The title of OAR 274-012-0120 is amended to more clearly reflect the content of the rule.

Rules Coordinator: Herbert D. Riley—(503) 373-2055

274-012-0001

Definitions for OAR 274-012-0001 through 274-012-0130

As used in Sections 0001 through 0131 of Division 012, unless otherwise required by context:

(1) "Department" or "ODVA" means the State of Oregon Department of Veterans' Affairs.

(2) "Program" or "OVEFAP" means the Oregon Veterans' Emergency Financial Assistance Program as established in ORS 408.500 (House Bill 3504).

(3) "Under Honorable Conditions" means that the official documents of discharge, service, or separation issued upon the termination of the veteran's active duty service with the Armed Forces are characterized by the relevant branch of the Armed Forces as "honorable" or "under honorable conditions".

(4) "Veteran" means a veteran as defined in ORS 408.500.

(5) "Immediate family" means a spouse, unmarried surviving spouse, child or stepchild.

Stat. Auth.: ORS 406.030, 406.050, 406.130, 408.010 & 408.500

Stats. Implemented: ORS 406.030, 406.050, 406.130, 408.010, 408.225, 408.500

Hist.: DVA 2-2006(Temp), f. & cert. ef. 2-23-06 thru 8-18-06; DVA 4-2006, f. & cert. ef. 4-25-06; DVA 1-2008(Temp), f. & cert. ef. 1-7-08 thru 6-30-08; DVA 3-2008, f. & cert. ef. 2-22-08

274-012-0100

Purpose and Objective

(1) It is the expressed policy of the Department to provide appropriate emergency financial assistance to veterans and their immediate families by means of the Department's Emergency Financial Assistance Program.

(2) Within the funds established by the Department, pursuant to ORS 408.500, an account is designated to be used by the Department consistent with this program. Funds held within this account will be used by the Department consistent with this Division 012 and applicable law exclusively for the purpose of one-time assistance to veterans and their immediate family, as determined by the Department, who have insufficient funds to meet their financial needs or responsibilities. Such needs may include, but are not limited to:

(a) Emergency or temporary housing and related housing expenses, such as expenses for utilities, insurance, house repairs, rent assistance or food;

(b) Emergency medical or dental expenses;

(c) Emergency transportation;

(d) Expenses related to starting a business, such as business licenses or occupational licenses;

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- (e) Temporary income after military discharge; and
 - (f) Legal assistance.
- Stat. Auth.: ORS 406.030, 406.050, 406.130, 408.010 & 408.500
Stat. Implemented: ORS 406.030, 406.050, 406.130, 408.010 & 408.500
Hist.: DVA 2-2006(Temp), f. & cert. ef. 2-23-06 thru 8-18-06; DVA 4-2006, f. & cert. ef. 4-25-06; DVA 3-2007, f. & cert. ef. 9-25-07; DVA 1-2008(Temp), f. & cert. ef. 1-7-08 thru 6-30-08; DVA 3-2008, f. & cert. ef. 2-22-08

274-012-0120

Criteria for Determination of Emergency Financial Assistance

(1) When determining to whom and in what amount Program funds will be made available to applicants, the Department may take into consideration various factors, including but not limited to:

- (a) The amount of available funds in the Program account;
- (b) Anticipated future deposits into the Program account;
- (c) The amount of present commitments from the Program account;
- (d) Anticipated future commitments from the Program account;
- (e) Comparative critical need by applicants as determined by the Department;
- (f) The appropriateness of the requested assistance;
- (g) The ability and established willingness of the applicant and the applicant's immediate family to appropriately use program assistance and to take steps for permanent improvement of their financial circumstances;
- (h) The eligibility of the applicant;
- (i) The number of persons and ages of such persons in the immediate family of the applicant;
- (j) The health and medical needs of the applicant and of immediate family members;
- (k) Any disability, particularly a disability that limits gainful employment, by an applicant or of an immediate family member of the applicant; and

(l) Other available assistance or support to the applicant and the applicant's immediate family, including but not limited to:

- (A) United States Department of Veterans Affairs (USDVA) benefits;
- (B) Social Security benefits;
- (C) Other pensions;
- (D) Millennium Bill benefits;
- (E) Medicare benefits;
- (F) Medicaid benefits;
- (G) Annuities;
- (H) Savings;
- (I) Investments; and
- (J) Income from other available resources.

(2) The payment of Program assistance is subject to the discretion of the Department in consideration of factors described above in Paragraph (1), together with any other factors, as deemed relevant by the Department. The Department may refuse, terminate, or suspend Program assistance to any veteran and the veteran's immediate family at any time without notice. The Department shall be under no obligation to provide Program assistance to any applicant or to the immediate family of any applicant.

Stat. Auth.: ORS 406.030, 406.050, 406.130, 408.010 & 408.500
Stat. Implemented: ORS 406.030, 406.050, 406.130, 408.010 & 408.500
Hist.: DVA 2-2006(Temp), f. & cert. ef. 2-23-06 thru 8-18-06; DVA 4-2006, f. & cert. ef. 4-25-06; DVA 1-2008(Temp), f. & cert. ef. 1-7-08 thru 6-30-08; DVA 3-2008, f. & cert. ef. 2-22-08

Rule Caption: Implement 2007 Legislative Changes.

Adm. Order No.: DVA 4-2008

Filed with Sec. of State: 2-22-2008

Certified to be Effective: 2-22-08

Notice Publication Date: 2-1-2008

Rules Amended: 274-025-0030, 274-045-0060, 274-045-0240

Rules Repealed: 274-015-0005

Subject: House Bill 2155 of the 2007 Regular Legislative session (Chapter 766 Oregon Laws 2007) amended ORS 407.275. A loan made through the Department of Veterans' Affairs may be amortized for up to 40 years.

House Bill 2160 of the 2007 Regular Legislative Session (Chapter 117 Oregon Laws 2007) repealed Attorney Services for Veterans — ORS 406.410, 406.420 and 406.430.

Rules Coordinator: Herbert D. Riley—(503) 373-2055

274-025-0030

Loan Requirements

(1) To be eligible for purchase or underwriting and closing by the ODVA pursuant to a commitment to an approved lender, a program loan

shall be made or processed by the approved lender during the period of that commitment. The loan shall comply with the terms of such commitment, the requirements set forth in the agreement between ODVA and the approved lender, and the conditions set forth in the rules and the Loan Origination Guide/Mortgage Brokers Loan Origination Guide.

(2) Each Approved Lender shall make loans for single-family dwellings.

(3) Each program loan shall have a final maturity of at least 15 and not more than 40 years from the date of its mailing.

(4) Each program loan shall be secured by a first lien security instrument as defined or allowed pursuant to OAR 274-025-010(11) and granted by the veteran on a home which is being financed. The veteran shall hold title to the home in fee simple.

(5) No program loan shall be made to refinance an existing loan, unless such loan was a temporary loan for the construction or rehabilitation of a home or other temporary initial financing. If a program loan is made to refinance such a loan, the approved lender shall certify to the ODVA that construction or rehabilitation has been satisfactorily completed before the delivery of the program loan for purchase.

(6) Each program loan shall be executed on forms approved by the ODVA. Such forms shall prescribe program loan requirements regarding insurance, escrow payments, late charges, defaults, and similar matters.

(7) The ODVA shall require that program loans be subject to acceleration at the option of the ODVA if at any time the veteran does not reside in the home as his/her primary residence, or if the veteran is determined to have been ineligible at the time the program loan was made.

(8) The interest rate on each program loan shall be at the rate stated in the applicable commitment issued by the ODVA.

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

Stat. Auth.: ORS 406.030, 407.115, 407.177, 407.179 & 407.181

Stat. Implemented:

Hist.: DVA 2-1992, f. & cert. ef. 1-2-92; DVA 4-2000, f. & cert. ef. 4-24-00; DVA 4-2008, f. & cert. ef. 2-22-08

274-045-0060

Terms of Loan

(1) The loan value (net appraised value) shall be used as the basis for determining the maximum loan, subject to statutory limitations. Under the provisions of ORS 407.225(3), the maximum loan on a home which is real property:

(a) May not exceed 100 percent of the net appraised value of the property or the purchase price (whichever is less);

(b) May not be more than 100 percent of the net appraised value as defined in OAR 274-045-0001, if the loan is for replacement financing;

(c) Shall not be more than the maximum original principal balance permitted on a single-family first mortgage loan by the Federal National Mortgage Association, as published in its announcement and subsequently included in its Selling Guide for a home.

(2) The borrower shall not receive any cash back from the ODVA loan.

(3) The Director shall determine the period and amount of repayment based on the age, condition, location, and useful life of the security, but the maximum period of repayment shall not exceed statutory limits.

(a) Loans shall be made in multiples of one dollar (\$1).

(b) Each program loan shall have a final maturity of at least 15 and not more than 40 years from the date of purchase.

(4) The borrower shall timely pay all property taxes and other assessments that may or do become a lien against the loan security.

(5) The borrower shall carry fire and extended coverage insurance on the security. The Director may also require that hazards other than fire be covered. All premiums and charges for said coverage shall be timely paid by the borrower:

(a) The Director may determine the form and amount of insurance coverage for the security;

(b) All insurance money shall be payable to the State of Oregon, Director of Veterans' Affairs, by endorsement of the Director-approved mortgagee clause;

(c) In the event of failure to maintain coverage, the Director shall acquire the necessary coverage and collect amounts due in a manner consistent with security documents;

(d) In case of loss, the Director shall determine the disposition of any and all funds received under the insurance policies.

(6) The Director may collect in advance, unless otherwise agreed, from said borrowers together with their payments required under section (3) of this rule, sufficient amounts to pay property taxes, insurance premiums, and other charges related to the security. Such additional amounts collected by the Director shall be held in escrow pending payment of the obli-

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gations for which they are collected and interest on said amounts shall be paid to the borrower in the manner and at the rate of interest described in ORS 87.245(1).

(7) The Director may pay property taxes, insurance premiums and other charges from funds collected from the borrower for those purposes. The Director, in the absence of funds collected from the borrower (or if such funds are insufficient in amount), may at his option, elect to pay property taxes, insurance premiums, and other charges. Any amount paid by the Director may be collected in the manner consistent with the security documents or other manner agreeable to the Director and borrower. The Director will not add amounts advanced for payment of property taxes or insurance premiums to the principal balance of the loan. On these loans, any amount advanced will be entered as a negative balance in the escrow account.

(8) The borrower's loan payment may be increased to repay the money advanced to pay the property taxes, insurance premiums, and other charges against the security, together with interest thereon, within a maximum period of 12 months or such shorter time as established by the Director.

Stat. Auth.: ORS 291.021, 406.030, 407.115, 407.169, 407.179, 407.179, 407.181, 407.225(3) & 407.275

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 3-2001(Temp), f. & cert. ef. 6-15-01 thru 12-11-01; DVA 9-2001, f. & cert. ef. 11-23-01; DVA 3-2003(Temp), f. & cert. ef. 4-7-03 thru 10-3-03; DVA 11-2003, f. & cert. ef. 9-23-03; DVA 8-2005, f. & cert. ef. 12-27-05; DVA 4-2008, f. & cert. ef. 2-22-08

274-045-0240

Loan Requirements

(1) To be eligible for purchase or underwriting and closing by the ODVA pursuant to a commitment to an approved lender, a program loan shall be made or processed by the approved lender during the period of that commitment. The loan shall comply with the terms of such commitment, the requirements set forth in the agreement between ODVA and the approved lender, and the conditions set forth in the rules and the Post Vietnam Era Veterans' Home Loan Origination Guide/Mortgage Brokers Loan Origination Guide.

(2) Each Approved Lender shall make loans for single-family dwellings.

(3) Each program loan shall have a final maturity of at least 15 and not more than 40 years from the date of its mailing.

(4) A first lien security instrument as defined shall secure each program loan or allowed pursuant to OAR 274-045-0001(30) and granted by the veteran on a home, which is being financed. The veteran shall hold title to the home in fee simple.

(5) No program loan shall be made to refinance an existing loan, unless such loan was a temporary loan for the construction or rehabilitation of a home or other temporary initial financing. If a program loan is made to refinance such a loan, the approved lender shall certify to the ODVA that construction or rehabilitation has been satisfactorily completed before the delivery of the program loan for purchase.

(6) Each program loan shall be executed on forms approved by the ODVA. Such forms shall prescribe program loan requirements regarding insurance, escrow payments, late charges, defaults, and similar matters.

(7) The ODVA shall require that program loans be subject to acceleration at the option of the ODVA if at any time the veteran does not reside in the home as his/her primary residence, or if the veteran is determined to have been ineligible at the time the program loan was made.

(8) The interest rate on each program loan shall be at the rate stated in the applicable commitment issued by the ODVA.

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

Stat. Auth.: ORS 406.030, 407.115, 407.177, 407.179 & 407.181

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 4-2008, f. & cert. ef. 2-22-08

Economic and Community Development Department Chapter 123

Rule Caption: Conform the Oregon Business Development Fund rules to current statute.

Adm. Order No.: EDD 3-2008(Temp)

Filed with Sec. of State: 2-26-2008

Certified to be Effective: 2-26-08 thru 8-1-08

Notice Publication Date:

Rules Amended: 123-017-0008, 123-017-0010, 123-017-0015, 123-017-0020, 123-017-0025, 123-017-0030, 123-017-0035, 123-017-0055

Subject: The temporary rule conforms the existing administrative rule to current statute, as adopted by the Legislature during the 2007 Session. The rule also addresses recent policy decisions by the department that relate to the administration of the fund.

Rules Coordinator: Paul J. Grove—(503) 986-0192

123-017-0008

Delegation

(1) Authority for the day-to-day operation of the Fund, including approval of loans and projects, and amendments thereto, is delegated to the Finance Committee.

(2) The Finance Committee shall adopt standards and procedures for the operation of the Fund. Such standards and procedures shall not be inconsistent with any part of this rule.

(3) The Department shall send to each member of the Commission a summary of each project to be considered by the Finance Committee. Commissioners shall receive such summaries in sufficient time to comment on the projects orally or in writing, and to attend each Finance Committee meeting, as each individual Commissioner may in his or her sole discretion determine.

(4) The Commission shall review and evaluate the operation of the Fund with such frequency as it may from time to time determine, and may order any changes that it considers necessary or desirable.

(5) The Commission shall retain final authority over policies and administrative procedures governing the operation of the Fund.

(6) The Director or designee is authorized to execute any document reasonably necessary or convenient to close any loan approved by the Finance Committee or, in the case of loans of \$100,000 or less, by the Director.

(7) When applicable, the references to the Finance Committee shall include the Director, acting in regard to loans for business development projects of \$100,000 or less pursuant to ORS 285B.080(3).

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.050 - 285B.098

Hist.: EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08

123-017-0010

Definitions

For the purpose of these rules, the following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) "Applicant" means any county, municipality, person or any combination of counties, municipalities or persons applying for a loan from the Oregon Business Development Fund under ORS 285B.050 to 285B.098.

(2) "Collateral" means property subject to a security interest, as defined in ORS 79.0102.

(3)(a) "Commission" means the Economic and Community Development Commission appointed under ORS 285A.040;

(b) "Finance Committee" means the Finance Committee for the Oregon Economic and Community Development Commission as authorized in ORS 285A.080.

(4) "Business Development Project" means the acquisition, engineering, improvement, rehabilitation, construction, operation or maintenance of any property, real or personal, that is used or is suitable for use by an economic enterprise and that will result in or will aid, promote or facilitate, development of one or more of the following activities:

(a) Manufacturing or other industrial production;

(b) Agricultural development or food processing;

(c) Aquacultural development or seafood processing;

(d) Development or improved utilization of natural resources;

(e) Convention facilities and trade centers;

(f) Tourist facilities other than retail or food service businesses;

(g) Transportation or freight facilities; and

(h) Other activities that represent new technology or type of economic enterprise that the Finance Committee determines is needed to diversify the economic base of an area but not including:

(A) Construction of office buildings, including corporate headquarters; and

(B) Retail businesses, shopping centers or food service facilities;

(C) An office area or facility providing an internal support function to, and serving as an integral part of, a business development project shall not be considered an office building under paragraph (h)(A) of this section.

(5) "Department" means the Economic and Community Development Department established under ORS 285A.070.

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(6) "Director" means the Director of the Economic and Community Development Department appointed under ORS 285A.070 or designee.

(7) "Financial Institution" means any financial institution defined under ORS 706.008.

(8) "Fund" or "OBDF" means the Oregon Business Development Fund as defined and set forth in ORS 285B.050–285B.098.

(9) "Local Development Group" means any public or private corporation that has as one of its primary purposes, as stated in its articles of incorporation, charter or bylaws, the promotion of economic development in any part of the State of Oregon.

(10) "Municipality" means any city, municipal corporation or quasi-municipal corporation.

(11) "Person" means any individual, association of individuals, joint venture, partnership, limited liability company or corporation.

(12) "Emerging Small Business" means any business as defined in ORS 200.005.

(13) "Distressed Area" means any area designated as a distressed area by the Department under ORS 285A.010.

(14) "Convention center" means a facility for the holding of meetings, conferences, conventions, trade shows or similar gatherings. Sleeping accommodations may be included but at least one-third of the OBDF proceeds must be used for public meeting facilities. Such facilities must have the capacity to seat a minimum of 300 people. However, the Finance Committee, in its sole discretion, may approve financing for projects consisting solely or primarily of sleeping accommodations if the applicant sufficiently demonstrates that existing sleeping accommodations are inadequate for existing facility meeting space.

(15) "Destination resort" means a project which has a significant impact on the regional tourism economy and has the capacity to be marketed to national or international markets. Incidental food service facilities may be included. Sleeping accommodations without unique attraction capabilities are not eligible.

(16) "County" means any county or federally recognized Oregon Indian tribe.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.050 & 285B.092

Hist.: EDD 2-1983(Temp), f. & cert. ef. 5-25-83; EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08

123-017-0015

Eligibility

(1) Eligible projects are business development projects as defined in OAR 123-017-0010(4). If the Department is unable to obtain a sufficient number of approvable applications to meet the requirements of ORS 285B.059(5), it may, notwithstanding the limitations imposed by ORS 285B.050(2)(g)(B), make loans to service and retail businesses operated by emerging small businesses which are located in or draw their workforces from within distressed areas as determined by the Department. The amount of loans the Department may make to service and retail businesses under (1) of this section shall be limited to the amount calculated under the method described in ORS 285B.059(5).

(2) Eligible purposes are the financing of land, buildings, fixture, equipment and machinery, research and development, and the provision of working capital.

(3) Eligible applicants are defined in OAR 123-017-0010(1).

(4) The relocation of a facility from one labor market area to another, if not accompanied by an expansion of the applicant's business or employment, is not an eligible activity unless:

(a) The relocation is caused by forces beyond the control of the applicant; or

(b) The relocation is necessary for the continued operation of the business; or

(c) There is no resulting loss of employment at the former site of the business.

(5) Relending of funds shall not be an eligible activity, except that the funds may be used for the local injection share of an SBA 503 or 504 Certified Development Company transaction.

(6) In cases where an otherwise eligible company or project has an insignificant (less than 25 percent) ineligible portion, the entire project may be determined eligible for a loan from the Fund.

(7) Other than as specified in section (6) of this rule, Fund financing will be limited to 40 percent of the amount of the eligible costs, except that

Fund financing may equal up to 50 percent of eligible costs when the application is submitted through a Financial Institution.

(8) Tourist facilities shall not be eligible unless:

(a) The project can be qualified as a convention center; or

(b) The project can be qualified as a destination facility.

(9) Refinancing of existing debt, including existing trade payables and delinquent taxes, shall not be eligible unless the applicant demonstrates to the satisfaction of the Finance Committee that:

(a) The applicant contributes significantly to a target population or to a geographical area targeted by the Oregon Business Development Fund;

(b) Substantial strengthening of applicant's management has occurred;

(c) The applicant requires refinancing to remain viable. Assessment of viability will be made at the sole discretion of the Finance Committee;

(d) Existing lenders agree to extend due dates, provide additional financing or provide other favorable terms to the applicant; and

(e) The applicant meets all other requirements set forth in statute and administrative rule, including demonstrating to the satisfaction of the Finance Committee that the project is feasible and a reasonable risk, has a reasonable prospect of repayment and can provide good and sufficient collateral.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.059, 285B.080(3) & 285B.092

Hist.: EDD 2-1983(Temp), f. & cert. ef. 5-25-83; EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 25-1990 (Temp), f. & cert. ef. 9-13-90; EDD 29-1990, f. & cert. ef. 12-12-90; EDD 6-1991(Temp), f. & cert. ef. 6-18-91; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08

123-017-0020

Preference

(1) Except in the case of a loan made from the Oregon Targeted Development Account, the Finance Committee shall give preference to loan applications for projects that demonstrate an overall community benefit and that have one or more of the following characteristics:

(a) Have a ratio of at least one projected job created or saved per \$30,000 sought to be borrowed from the Oregon Business Development Fund.

(b) Are operated by businesses with fewer than 100 employees;

(c) Are located in rural or distressed areas of the state;

(d) Are located in Enterprise Zones designated under ORS 285C.050–285C.250;

(e) Employ displaced workers in the area;

(f) Assist in the economic diversification of the area;

(g) Contain a significant amount of owner equity capital. At least ten percent of the project costs for established companies (three years old or more) and 30 percent of project costs for start-ups (firms less than three years old, or firms making the transition from research and development to production) must come from equity or subordinated loans from the owners;

(h) Maximize participation by financial institutions and local development groups;

(i) Produce goods or services for the export market;

(j) Encourage the flow of capital from outside the local area; and

(k) Do not cause severe adverse competitive disadvantages to existing businesses.

(2) The Finance Committee shall be the sole judge of the relative importance of each of the above factors for each individual loan application under consideration. Factors will not necessarily be assigned the same weights under all circumstances.

(3) In the case of a loan made from the Oregon Targeted Development Account, the Finance Committee will strive to fund projects that will create or save at least one job for every \$20,000 of Oregon Business Development Fund investment.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.059 & 285B.092

Hist.: EDD 2-1998(Temp), f. & cert. ef. 5-25-83; EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 6-1991(Temp), f. & cert. ef. 6-18-91; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08

123-017-0025

Application Procedure

(1) It is the policy of the Finance Committee to strive for and encourage, throughout the application process:

ADMINISTRATIVE RULES

EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08

(a) Maximum participation by financial institutions and local development groups; and

(b) A minimum administrative burden on the applicant and on the local government.

(2) Any applicant may submit an application to the Department on a form approved by the Department, together with a \$100 application fee.

(3) If the amount of the loan being sought from the Fund is \$100,000 or less, the Director may in the Director's sole discretion approve or deny the loan request or forward it to the Finance Committee for the Committee's consideration.

(4) If the amount of the loan being sought from the fund exceeds \$100,000 the Department shall make a recommendation to the Finance Committee, which may in its sole discretion approve or deny the loan request.

(5) If a loan request is approved, the Department shall prepare the documents necessary to close the loan transaction. Such documents shall reflect all terms and conditions upon which the Finance Committee or the Director may have conditioned approval of the loan. Any material modifications of those terms and conditions must be approved by the Chair of the Finance Committee or his/her designee, or the Director for loans of \$100,000 or less.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.053 & 285B.092

Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-87; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08

123-017-0030

Loan Conditions

(1) The Director (for loan requests of \$100,000 or less) or the Finance Committee may approve a loan request if it finds that:

(a) Fund participation in any financing shall not exceed 40 percent of the total amount of the eligible project costs, except that Fund financing may be up to 50 percent when an application is submitted through a financial institution.

(b) The proposed business development project is feasible and a reasonable risk from practical and economic standpoints, and the loan has reasonable prospect of repayment.

(c) The applicant can provide good and sufficient collateral for the loan, as determined by the Commission. The Commission's security interest may be subordinated to the security interest of other lenders participating in the project. The security interest of loans from the Oregon Targeted Development Account will not be subordinated to the security interest of other lenders, unless the Finance Committee or the Director finds there is an abundance of collateral and/or company or guarantor financial strength. The Economic and Community Development Commission may make loans to emerging small businesses in distressed areas, as defined by the department, without regard to the requirements for security and collateral under ORS 285B.059 and 285B.062 that are otherwise applicable. Collateral value of out-of-state real property will be significantly discounted from nominal assessed or appraised value.

(d) Monies in the Oregon Business Development Fund are or will be available for the proposed business development project.

(e) There is a need for the proposed business development project.

(f) The applicant's financial resources are adequate to ensure success of the project.

(g) The applicant has not received or entered into a contract or contracts exceeding \$700,000 with the commission, under authority of ORS 285B.050–285B.098, for the previous 365 days.

(2) The Finance Committee may, in its sole discretion, permit the assumption of an outstanding Oregon Business Development Fund Loan, if the assuming obligor satisfies the Finance Committee or the Director as to its willingness and ability to perform all obligations of the original borrower related to the loan, including but not limited to the obligation to repay the loan in accordance with its terms, and if the State's collateral position is not diminished. Oregon Business Development Fund loans are not, however, necessarily or automatically assumable.

(3) The applicant agrees to abide by all laws and regulations applicable to the applicant's project.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.059 & 285B.092

Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01;

123-017-0035

Loan Agreement

If the Finance Committee approves the business development project, the Finance Committee or the Director, on behalf of the state, and the Borrower may enter into a loan contract of not more than \$700,000, secured by good and sufficient collateral (except as noted in OAR 123-017-0030(1)(c), as determined by the Finance Committee, that shall set forth, among other matters:

(1) A plan for repayment by the Borrower to the Oregon Business Development Fund moneys borrowed from the Fund used for the business development project with interest charged on those moneys at the fixed rate of one percentage point more than the prevailing interest rate on United States Treasury bills, notes or bonds of a comparable maturity. Loans made from the Oregon Targeted Development Account shall be made at a fixed rate of four percentage points less than the prevailing prime rate. The rate shall not be less than four percent. For the purposes of this section, the prevailing interest rate shall be the weekly average interest rate as set forth in the most recent Federal Reserve Statistical Release H.15(519) that the Department has received at the time the loan is approved. The repayment plan, among other matters:

(a) Shall provide for commencement of repayment by the applicant of moneys used for the business development project and interest thereon no later than one year after the date of the loan contract or at such other time as the Finance Committee may provide;

(b) May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances if approved by the Finance Committee or the Director;

(c) Shall provide for such evidence of debt assurance of, and security for, repayment of the loan as is considered necessary by the Finance Committee;

(d) Shall set forth a schedule of payments and the period of loan which shall not exceed the usable life of the contracted project or 25 years from the date of the contract, whichever is less. The term of the Fund loan will normally be matched to, and not exceed twice that of the commercial or private lender participating in the project. Loans from the Oregon Targeted Development Account shall be for a maximum term of 5 years, with a maximum amortization of 15 years. The term of the loan from the Oregon Targeted Development Account may be extended by the Finance Committee, with any additional terms and conditions, including interest rate, that it may determine. The payment schedule shall include repayment of interest that accrues during any period of delay in repayment authorized by subsection (a) of this section, and the payment schedule may require payments of varying amounts for collection of accrued interest;

(e) Shall set forth a procedure for formal declaration of delinquency or default of payment by the Department. Loans shall be declared delinquent when any payment is more than ten days late. Borrower shall be notified in writing of declaration of delinquency, and shall have 31 days from the original payment date to bring the loan current. If the loan is not brought current, or arrangements satisfactory to the Department for bringing the loan current have not been made, the Department may declare the loan in default, declare the entire outstanding indebtedness to be forthwith due and payable and assign the loan to the Attorney General for collection;

(f) May allow for other forms of payment on loans than scheduled principal and interest payments, as determined by the Finance Committee, or Director in the case of loans of \$100,000 or less.

(2) Provisions satisfactory to the Department for field engineering and inspection, the Department to be the final judge of completion of the contract.

(3) That the liability of the state under the contract is contingent upon the availability of moneys in the Oregon Business Development Fund for use in the business development project.

(4) Such further provisions as the Finance Committee considers necessary to ensure expenditure of the funds for the purposes set forth in the approved application.

(5) Any Borrower receiving a loan from the fund shall report to the Economic and Community Development Department the estimated number of jobs affected by the business development project financed under ORS 285B.050 to 285B.098.

(6) That the Borrower is responsible for payment of:

(a) All of the expenses of the operation and maintenance of the project, including adequate insurance;

(b) All taxes and special assessments levied with respect to the leased premises and payable during the term of the lease;

ADMINISTRATIVE RULES

(c) Insurance premiums and providing insurance in amount and coverage acceptable to the Finance Committee. Such insurance shall include but shall not be limited to: fire and hazard insurance, liability insurance, worker's compensation, unemployment insurance and flood insurance (if applicable); and

(d) All out-of-pocket costs associated with the loan closing including but not limited to filing and recording fees, title insurance and appraisals.

(7) That the Borrower will provide to the Department on an annual basis, within 90 days of the end of its fiscal year, the same type of financial statements as required by the participating bank. The Finance Committee or the Department may require additional financial information.

(8) That the Borrower will provide an assignment of life insurance on active principals in Borrower. In cases of abundant collateral or substantial depth in management, the Finance Committee, or Director for loans under \$100,000, may waive this requirement.

(9) In the case of loans of more than \$100,000 that are funded by proceeds from the Oregon Lottery, that the Borrower shall make a good faith effort to hire and retain low-income individuals who have received job training assistance from publicly funded job training providers and enter into a first-source hiring agreement with a publicly funded job training provider.

(10) If the loan will result in the construction, expansion, rehabilitation or remodeling of a facility to which the public has access, adequate access for handicapped persons must be provided. This provision applies only to firms that deal directly with the general public in the normal and usual course of their business, and to facilities in which business is customarily transacted by and with members of the general public.

(11) If a project involves building construction, expansion, rehabilitation or modification, a loan from the Fund shall be permanent and not interim financing.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.062 & 285B.092
Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 25-1990 (Temp), f. & cert. ef. 9-13-90; EDD 29-1990, f. & cert. ef. 12-12-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08

123-017-0055 Fees and Charges

(1) The Department shall charge and collect a fee of \$100 at the time the application is filed.

(2) In addition, the applicant, immediately upon receiving the loan proceeds, shall pay to the Department one and one-half percent of the principal amount of the loan.

(3) Monies referred to in (1) and (2) of this section shall be paid into the Fund.

(4) The Department may, in its sole discretion, use some or all of the money collected under section (2) of this rule, plus a maximum of an additional one and one-half percent as payment to a local development group, county or municipality for packaging the loan, processing applications, investigating proposed business development projects and servicing outstanding loans. The additional amount of up to one and one-half percent may be paid for projects which are located in an enterprise zone or in a distressed area or for which the OBDF loan being sought is not more than \$100,000. In no case shall the Department make any payment of more than \$10,000 for any one project. In no case shall the Department make any payment to any third party until the loan has been closed and the Department has collected the fee specified in section (2) of this rule.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.056, 285B.068 & 285B.092
Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-13-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08

Rule Caption: Conform Entrepreneurial Development Loan Fund rules to existing statute.

Adm. Order No.: EDD 4-2008(Temp)

Filed with Sec. of State: 2-26-2008

Certified to be Effective: 2-26-08 thru 8-1-08

Notice Publication Date:

Rules Amended: 123-019-0020, 123-019-0040

Subject: The temporary rule conforms the existing rule to current statute, to reflect the statutory changes that were implemented from the 2007 Legislative Session.

Rules Coordinator: Paul J. Grove—(503) 986-0192

123-019-0020

Eligibility

(1) To be eligible for a loan from the Fund, each Applicant must meet at least two of the three criteria in this section:

(a) The Applicant must not have been operating for more than 36 months as of the date application is made to the Fund;

(b) The Applicant must have had total revenues of \$175,000 or less in the 12 calendar months immediately preceding the date application is made to the Fund;

(c) At least 50 percent of the Applicant must be owned by an individual or individuals classified as Severely Disabled.

(2) The Applicant may not be effectively owned or controlled by another business entity or other Person that, either by itself or when combined with the Applicant, is not eligible for a loan under this rule. Ownership of 50 percent or more of the Applicant would constitute, or a subsidiary which sells a majority of its goods or services to the parent may constitute, effective ownership or control. The Director may, however, make this determination based on the facts of an individual case.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.740 – 285B.758
Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 7-1993(Temp), f. & cert. ef. 9-17-93; EDD 3-1994, f. 2-4-94, cert. ef. 2-7-94; EDD 11-1997(Temp), f. & cert. ef. 10-7-97; EDD 10-1998, f. & cert. ef. 5-22-98; EDD 5-2007(Temp), f. & cert. ef. 8-28-07 thru 2-22-08; EDD 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08

123-019-0040

Loan Conditions

The Director may approve a loan request if the Director finds that:

(1) The Applicant and the Project are eligible for a loan from the Fund according to the criteria for a loan from the Fund according to the criteria set forth in OAR 123-019-0020 and 123-019-0030.

(2) The Applicant has available, and has irrevocably committed to the Project, Equity funds in the form of cash or property in an amount equal to or greater than 20 percent of the amount of the loan from the Fund.

(3) The proposed Project is feasible and a reasonable risk from practical and economic standpoints, and the loan has a reasonable prospect of repayment from cash flow and collateral and that the loan is fully secured by collateral value.

(4) The Applicant can provide good and sufficient Collateral for the loan. The Collateral coverage ratio for the loan is expected to be at least 1:1 applying the following advance ratios:

(a) Real property will generally be valued for Collateral purposes at 70 percent of the tax assessed value or 80 percent of appraised value;

(b) New construction will generally be valued for Collateral purposes at 80 percent of cost;

(c) Existing machinery will generally be valued for Collateral purposes at 40 percent of depreciated book value;

(d) Newly acquired machinery will generally be valued for Collateral purposes at 80 percent of acquisition cost.

(5) Applicants should be aware that the Collateral value of out-of-state real property will be significantly discounted from nominal assessed or appraised value. The Department may, in its sole discretion, assign a value of more or less than the above percentages.

(6) Monies in the Fund are or will be available for the proposed Project.

(7) The Applicant's financial resources and management capability appear adequate to assure success of the Project.

(8) The initial amount borrowed from the Fund by any borrower does not exceed \$25,000 and the total amount borrowed does not exceed \$40,000.

(9) The Director may, in his or her sole discretion, permit the assumption of an outstanding EDLF loan, if the assuming obligor satisfies the Director as to its willingness and ability to service the loan, and if the State's Collateral position is not diminished. The Director may require the obligor to meet all eligibility requirements set out in OAR 123-019-0020 and 123-019-0030. EDLF loans are not necessarily or automatically assumable.

(10) The Applicant agrees to abide by all laws and regulations applicable to the Applicant's Project and will receive all applicable federal, state and local permits and licenses before the disbursement of any proceeds from the Fund.

Stat. Auth.: ORS 285A.075

ADMINISTRATIVE RULES

Stats. Implemented: ORS 285B.740 - 285B.758
Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 11-1997(Temp), f. & cert. ef. 10-7-97; EDD 10-1998, f. & cert. ef. 5-22-98; EDD 5-2007(Temp), f. & cert. ef. 8-28-07 thru 2-22-08; EDD 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08

Rule Caption: Conform the Credit Enhancement Fund rules to current statute.

Adm. Order No.: EDD 5-2008(Temp)

Filed with Sec. of State: 2-26-2008

Certified to be Effective: 2-26-08 thru 8-1-08

Notice Publication Date:

Rules Amended: 123-021-0010, 123-021-0050, 123-021-0090

Rules Suspended: 123-021-0030

Subject: The temporary rule conforms the existing rule to the current statute, as well as addresses changes that reflect recent policy decisions by the department regarding the loan insurance programs in keeping with the statutory direction.

Rules Coordinator: Paul J. Grove—(503) 986-0192

123-021-0010

Definitions

For the purpose of these rules, the following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) "Application" means a request for a loan or other credit guarantee submitted to the Department by a Financial institution.

(2) "Average annual employment" means:

(a) In the case of a Borrower existing for more than twelve months preceding the date of application, the average level of employment for the twelve months preceding the date of application;

(b) In the case of a Borrower that has existed for less than twelve months prior to the date of application, the average of all monthly employment levels preceding the date of application;

(c) In the case of a new Borrower, the number of employees at the time of application.

(3) "Borrower" means a business entity which meets the eligibility requirements of OAR 123-021-0010(19), and includes a prospective borrower where the context requires.

(4) "Brownfield" or "Brownfields" means real property where expansion or redevelopment is complicated by real or perceived environmental contamination.

(5) "Commission" means the Oregon Economic and Community Development Commission appointed under ORS 285A.040 or its designee.

(6) "Department" means the Economic and Community Development Department created under ORS 285A.070.

(7) "Deputy Director" means any Deputy Director or any Assistant Director appointed by the Director under ORS 285A.070.

(8) "Destination activities or facilities other than retail or food service" means a Qualified business which has a significant impact on the regional recreational or tourism economy. Incidental food service or retail facilities necessary to the operation of a destination activity or facility are eligible. Sleeping accommodations without unique attraction capabilities are not Qualified businesses.

(9) "Director" means the Director of the Department appointed under ORS 285A.070.

(10) "Distressed area" means any area as defined by the Department under ORS 285A.010.

(11) "Eligible purposes" means the acquisition, improvement, rehabilitation, or construction of real or personal property, working capital for operations, export transactions, maintenance and other costs and expenses which are used for purposes other than acquiring real or personal property, but not including:

(a) An insured loan used for any personal, family, or household expenses of the Borrower or any guarantor;

(b) An insured loan used for construction financing;

(c) An insured loan for the construction of residential housing;

(d) An insured loan made primarily to pay off or refinance an existing debt to a creditor whose loan is inadequately secured or who is in danger of sustaining a loss. The Department will consider refinancing requests on a case by case basis, except in the case of loans where refinancing constitutes a portion of an application and is necessary to improve a collateral position. In evaluating such requests the Department will consider the requirements of this section and the financial benefits to the Borrower, the prospects for success, public benefits such as jobs created or retained, the extent to which Financial institutions agree to extend terms or provide other favorable

financing to a Borrower, and the extent to which collateral securing an insured loan is improved.

(e) An insured loan used to purchase an existing Qualified business, except for:

(A) Acquisition/expansions where the majority of loan proceeds are used to support expansion improvements;

(B) Restructured enterprises, including Employee Stock Ownership Plans, where jobs might otherwise be lost.

(12) "Environmental Action" means activities undertaken to:

(a) Determine if a release has occurred or may occur, if the release or potential release, poses a significant threat to human health or the environment, or if additional remedial actions may be required at the site;

(b) Conduct a remedial investigation and a feasibility study;

(c) Plan for remedial action or removal action; or

(d) Conduct a remedial action or removal action at a site.

(13) "Financial institution" means a financial institution defined in ORS 706.005.

(14) "Fund" means the Credit Enhancement Fund created by ORS 285B.215.

(15) "Loan authorization" means a letter from the Director or Deputy Director or their designees to a Financial institution agreeing to insure a loan to a Borrower on the terms and conditions and subject to the requirements stated therein.

(16) "Loan insurance agreement" means the agreement between the Financial institution and the Department required by OAR 123-021-0100.

(17) "Manager" means the Manager of the Business Finance in the Department, or his/her designee.

(18) "Program(s)" means the loan insurance and other credit guarantee programs governed by this division of the rules.

(19) "Qualified business" means any existing or proposed business that, except when located in a distressed area, sells goods or services in markets for which national and international competition exists. In a distressed area, any existing or proposed business is a Qualified business. Any company that owns, occupies, operates, or has entered into an agreement to own, occupy or operate real property containing a Brownfield is a Qualified business. Outside of a distressed area, any existing or prospective business entity that will result in or will aid, promote or facilitate, development of one or more of the following activities shall be a Qualified business:

(a) Manufacturing or other industrial production;

(b) Food processing;

(c) Aquaculture development or seafood processing;

(d) Convention facilities or trade centers;

(e) Destination facilities other than retail or food service;

(f) Transportation or freight facilities;

(g) Distribution facilities; or

(h) Other activities, as approved by the Department, that represent new technology or diversifying activity but not including:

(A) Construction of office buildings;

(B) Retail businesses, shopping centers and food service facilities;

(C) Motels or bed and breakfast hotels without unique attraction facilities;

(D) Professional services for medicine, law, dentistry or finance;

(E) Athletic, racquetball, handball clubs, private membership clubs, and golf courses;

(F) Sand and gravel facilities; or

(G) Newspapers.

(i) For the Evergreen Entrants Program, a Qualified business includes persons or enterprises without, or about to be without, existing line of credit Working capital loans. For the Evergreen Plus Program, a Qualified business includes persons or enterprises with existing line of credit Working capital loans.

(20) "Working capital loan" means any loan the proceeds of which are to be used for operating, maintenance and other costs and expenses or for purposes other than acquiring real or personal property.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 12-1997(Temp), f. & cert. ef. 10-7-97; EDD 11-1998, f. & cert. ef. 5-22-98; EDD 8-1999, f. & cert. ef. 10-1-99; EDD 4-2007(Temp), f. & cert. ef. 8-28-07 thru 2-22-08; EDD 5-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08

123-021-0030

Borrower Preferences

(1) Not less than 20 percent of all moneys available for loan guarantees from the Fund is reserved for loan guarantees to Emerging small businesses.

ADMINISTRATIVE RULES

(2) The amounts reserved for the 1999–2001 biennium for Emerging small businesses is: \$13 million.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 285B.200 - 285B.218, SB 402 & SB 128
Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 12-1997(Temp), f. & cert. ef. 10-7-97; EDD 11-1998, f. & cert. ef. 5-22-98; EDD 8-1999, f. & cert. ef. 10-1-99; Suspended by EDD 4-2007(Temp), f. & cert. ef. 8-28-07 thru 2-22-08; Suspended by EDD 5-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08

123-021-0050

Application Procedure

(1) The Department shall determine when an application is complete.

(2) It shall be the responsibility of the Financial institution to submit a complete application.

(3) The Department shall consider the application as expeditiously as possible after a complete application is received with the goal of processing applications within ten business days.

(4) The Department will review an application based on the following criteria and considerations:

(a) An application will not be approved unless the Department determines that there is a reasonable prospect that the Borrower will repay a loan according to its terms.

(b) An application will only be approved to the extent, in terms of amount, percentage and period of insurance, that is necessary and prudent for the Department to provide to complete the financing. In no event shall the insurance provided for a Borrower exceed the maximum permitted for a particular Insurance Program.

(c) No application will be approved unless the Department determines that the insured loan will be serviced by a Financial institution as required by the Department.

(d) No application will be approved unless the Department determines that the borrower is eligible and the insured loan proceeds will be used for an eligible purpose.

(e) No application will be approved unless the Department determines that the application is complete and that information sufficient to make an informed decision on the application has been received.

(f) In reviewing applications, the Department will consider the following, as applicable:

(A) The extent to which the Borrower demonstrates a need for an insured loan.

(B) The economic feasibility of the business endeavor as evidenced by the Borrower's present and past financial situation and business experience and the general reasonableness of the business proposal and financial projections for the future.

(C) Whether the Borrower and any guarantors have satisfactory credit histories.

(D) Whether the Borrower has sufficient capital and other resources to conduct the business as planned, and the amount and source of equity contributed.

(E) The adequacy of the security offered for the loan.

(F) The extent to which the risk of financial loss is shared by others.

(G) The viability of the industry of which the Borrower is a part and the contribution of the Borrower to that industry.

(H) The extent to which the Borrower contributes to local economic development, market development and employment opportunities.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.200 - 285B.218
Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 12-1997(Temp), f. & cert. ef. 10-7-97; EDD 11-1998, f. & cert. ef. 5-22-98; EDD 4-2007(Temp), f. & cert. ef. 8-28-07 thru 2-22-08; EDD 5-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08

123-021-0090

Loan Insurance Programs

The Department shall offer the following Insurance Programs:

(1) Conventional Insurance, under which the Department may insure up to 90 percent of a loan to a maximum of \$700,000. Should a Borrower which receives an insured loan default or otherwise be unable to make loan payments, the Department would pay the Financial institution up to 90 percent of the deficiency. The balance of any loss is absorbed by the Financial institution. Loan payments and the proceeds of collateral are applied pro rata to the insured and uninsured portion of a loan. The Department's obligation would be limited to a payment of the insured percentage of a loan times the amount of principal, accrued interest and the Financial institution's reasonable costs of collection, exclusive of costs attributed to environmental problems, remaining unpaid after liquidation of collateral, up to the lesser of \$700,000 or an amount equal to the insured percentage of the original loan amount authorized in the Loan authorization.

(2) Evergreen Entrants Insurance, under which the Department may insure up to 75 percent, on a pro rata basis, of a line of credit Working capital loan, not to exceed the lesser of \$300,000 or an amount equal to the insured percentage of the original loan amount authorized in the Loan Authorization. Eligible borrowers include persons or enterprises without or about to be without existing line of credit Working capital loans. To participate in the Evergreen Entrants Program, the Department must be satisfied the Financial institution has the capacity to service the loan effectively, including monitoring compliance with any audit and control procedures prescribed by the Department or comparable procedures of the Financial institution approved by the Department.

Stat. Auth.: ORS 285.065 & 285.466 - 285.481
Stats. Implemented: ORS 285.474(4)
Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 13-2002(Temp), f. & cert. ef. 6-18-02 thru 12-13-02; Administrative correction 4-15-03; EDD 6-2005(Temp), f. & cert. ef. 8-5-05 thru 1-31-06; EDD 1-2006, f. & cert. ef. 2-10-06; EDD 5-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08

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Rule Caption: Conform the Capitol Access Program rules to existing statute.

Adm. Order No.: EDD 6-2008(Temp)

Filed with Sec. of State: 3-4-2008

Certified to be Effective: 3-4-08 thru 8-1-08

Notice Publication Date:

Rules Amended: 123-018-0010, 123-018-0040, 123-018-0060, 123-018-0085, 123-018-0100, 123-018-0160

Subject: The temporary rule conforms the existing rule to statute, as well addresses recent policy decisions by the department that relate to the administration of the program.

Rules Coordinator: Paul J. Grove—(503) 986-0192

123-018-0010

Definitions

As used in this division of administrative rules, the following definitions apply, unless the context requires otherwise:

(1) "Agreement" means a contract between a Financial Institution and the Department authorizing the Financial Institution to participate in the Program as required under ORS 285B.132.

(2) "Borrower" means a Qualified Business that has received a Qualified Loan from a Participating Financial Institution, including but not limited to a corporation, partnership, limited liability company, joint venture, sole proprietorship or cooperative.

(3) "Brownfield" means any real property where expansion or redevelopment is complicated by actual or perceived environmental contamination.

(4) "Department" means the State of Oregon Economic and Community Development Department under ORS Chapter 285A.

(5) "Distressed Area" means a geographic area so designated as described in division 024 of these administrative rules.

(6) "Enrolled Loan" means a Qualified Loan enrolled in the Program as described in OAR 123-018-0080, including but not limited to a term loan or line of credit.

(7) "Environmental action" on a brownfield(s) means activities undertaken to:

(a) Determine if a release has occurred, or may occur, if the release or potential release poses a significant threat to human health or the environment, or if additional remedial actions may be required at the site;

(b) Conduct a remedial investigation and a feasibility study;

(c) Plan for remedial action or removal; or

(d) Conduct a remedial action or removal action at a site.

(8) "Financial Institution" means a financial institution, as defined in ORS 706.008.

(9) "Fund" means the Capital Access Fund in the State Treasury under ORS 285B.147.

(10) "Loss" means any principal amount due and not paid, accrued interest due and not paid, and actual and necessary, documented out-of-pocket collection expenses at the time the Participating Financial Institution determines, in a manner consistent with its standard lending and loan loss criteria and normal method for making such determinations, that an Enrolled Loan is uncollectible and is to be charged off as a loss. The amount of principal and interest included in the Loss shall not exceed the principal amount of the Enrolled Loan, plus accrued and unpaid interest on covered principal amount from the date the Qualified Loan is made.

(11) "Loss Reserve Account" means an account in the State Treasury or any Financial Institution that is established and maintained by the

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Department for the benefit of a Financial Institution participating in Program.

(12) "Participating Financial Institution" means a Financial Institution that has executed an Agreement with the Department to participate in the Program and has enrolled one or more qualified loans.

(13) "Primary Economic Effect" means the majority of economic benefit resulting from a business activity. A business's Primary Economic Effect is in a particular geographic location if either at least 51 percent of the business's total revenues are generated, or at least 51 percent of the business's total jobs are created or retained, in that location.

(14) "Program" means the Capital Access Program authorized by ORS 285B.126 to 285B.147.

(15) "Qualified Business" means any person, conducting business for profit or not for profit, which is authorized to conduct business in the State of Oregon.

(16) "Qualified Loan" means a loan or portion of a loan made by a Participating Financial Institution to a Qualified Business for any business activity that has its Primary Economic Effect in Oregon. The term does not include:

(a) A loan for the purchase of owner-occupied residential housing or for the construction, improvement, or purchase of residential housing that is owned or to be owned by the borrower;

(b) A loan for the purchase of real property that is not used for the business operations of the Borrower; and

(c) A loan or portion of a loan used to refinance the balance of an existing loan that is not an enrolled loan. Any increased portion of the loan used for other purposes may be eligible to be enrolled.

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

Stat. Auth.: ORS 285A.075, 285B.135(3), 285B.138(4)

Stats. Implemented: ORS 285B.126 - 285B.147

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 1-1994(Temp), f. & cert. ef. 1-11-94; EDD 9-1994, f. 5-27-94, cert. ef. 6-1-94; EDD 10-1997(Temp), f. & cert. ef. 10-7-97; EDD 9-1998, f. & cert. ef. 5-22-98; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08

123-018-0040

Agreement

All Agreements entered into between a Participating Financial Institution and the Department shall provide:

(1) For the creation of a Loss Reserve Account by the Department, owned by the Department for the benefit of the Participating Financial Institution in accordance with ORS 285B.135;

(2) That the liability of the State of Oregon and the Department to the Participating Financial Institution under the Agreement is limited to the outstanding balance in the Loss Reserve Account for that Participating Financial Institution, less the portion of the interest that is available for withdrawal by the Department for administrative costs as described in OAR 123-018-0060;

(3) That the terms and conditions of Qualified Loans are to be determined solely by the Participating Financial Institution and Borrower;

(4) The method for enrolling Qualified Loans in the Program;

(5) That the Borrowers, the Participating Financial Institution, and (subject to the availability of money in the Fund) the Department will deposit moneys into the Participating Financial Institution's Loss Reserve Account when the Participating Financial Institution makes a Qualified Loan to a Borrower;

(6) A claims process for reimbursement of Losses that have been incurred from defaults on Enrolled Loans;

(7) For payment by the Department from the Loss Reserve Account to the Participating Financial Institution to reimburse it for such Losses, up to the total amount of the then current balance available in the Loss Reserve Account, less the portion of the earned interest that belongs to the department for administrative costs.

(8) For disposition of any recoveries from a Borrower made by the Participating Financial Institution subsequent to being reimbursed for any Loss by the Department;

(9) Conditions for subrogation of the Department, at the Department's request, to the rights of the Participating Financial Institution in collateral, personal guarantees or other forms of security for the Qualified Loan;

(10) Conditions for withdrawal by the Department of excess balances or of certain interest earnings (see OAR 123-018-0150) in the Loss Reserve Account;

(11) Conditions for termination by the Department of the obligation to enroll Qualified Loans under the Program;

(12) Conditions for termination of the Agreement, and disposition by the Department of any remaining balance in the Loss Reserve Account;

(13) For withdrawal by the Participating Financial Institution from the Program and disposition by the Department of any remaining balance in the Loss Reserve Account;

(14) For the Participating Financial Institution to periodically report to the Department any information the Department requires, including financial information that is identifiable with, or identifiable from, the financial records of a Borrower;

(15) For inspection by the Department of the Participating Financial Institution's pertinent files relating to Enrolled Loans;

(16) That the Department may require from the Participating Financial Institution information relating to the Participating Financial Institution's status and performance, as developed by or for applicable state or federal regulatory bodies, and relevant to the Participating Financial Institution's participation in the Program or the financial health of institution, or that the Department may obtain public information from state or federal regulatory bodies such as the Oregon State Department of Consumer and Business Services, Division of Finance and Corporate Securities; and

(17) For other terms and conditions as the Department may require.

Stat. Auth.: ORS 285A.075 & 285B.135(3)

Stats. Implemented: ORS 285B.132, 285B.135, 285B.138 & 285B.141

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08

123-018-0060

Ownership, Control, Investment of Loss Reserve Account

(1) All moneys in a Loss Reserve Account are the exclusive property of the State of Oregon, acting by and through the Department, and are controlled solely by the Department. The Department may withdraw funds from a Loss Reserve Account only as described in this division of administrative rules or as contained in provisions of the applicable Agreement.

(2) The Department may withdraw and transfer into the Capital Access Fund up to 50% of the interest earned on moneys in Loss Reserve Accounts to pay for administrative expenses incurred by the Department.

(3) Any earnings on the balance in a Loss Reserve Account are part of the Loss Reserve Account, except as described in this section and in OAR 123-018-0150.

Stat. Auth.: ORS 285A.075 & 285B.135(3)

Stats. Implemented: ORS 285B.135 & 285B.147

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08

123-018-0085

State Contributions to Loss Reserve Accounts

The Department shall determine the amount of money it transfers from the Fund to a Loss Reserve Account as follows:

(1) For each Enrolled Loan, the Department shall deposit an amount equal to or greater than the total fees transmitted as described in OAR 123-018-0080(1)(b) and as required in OAR 123-018-0070, subject to further limitations in this rule.

(2) If one or both of the following conditions exist, the Department shall deposit an amount equal to 200 percent of the minimum allowed by section (1) of this rule, except as otherwise restricted in section (4) of this rule:

(a) The Borrower's business operations that benefit from the Enrolled Loan are entirely located in a Distressed Area at the time that the Qualified Loan is made consistent with OAR 123-018-0080(1)(a); or

(b) The Enrolled Loan provides the Borrower with funding for use in an environmental action on a brownfield(s).

(3) For any Participating Financial Institution, the Department may deposit 200 percent of the minimum allowed by section (1) of this rule if the Loss Reserve Account currently contains less than \$100,000 according to the most recent information provided to the Department at the time of loan enrollment.

(4) The Department may not transfer:

(a) An amount greater than \$35,000 per Enrolled Loan and associated, concurrent transactions with related business interests; or

(b) More than a total of \$150,000 from the Fund to a Loss Reserve Account for a single Qualified Business.

(5) Unless otherwise provided in this rule, the Department may transfer up to 200 percent of the minimum described in section (1) of this rule, if the Department finds the Qualified Loan advances economic development or job creation in this state by small business.

Stat. Auth.: ORS 285A.075, 285B.135(3) & 285B.138(4)

Stats. Implemented: ORS 285B.135 & 285B.138

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Hist.: EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08

123-018-0100

Payment of Claims by Department

(1) The Department shall reimburse a Participating Financial Institution for Losses claimed as described in OAR 123-018-0090. The Department may reject a claim only if the Department determines the representations and warranties provided by the Participating Financial Institution at the time of enrolling the Qualified Loan were false.

(2) All interest earnings shall be available to pay Loss claims, except for:

(a) Earnings available for withdrawal by the Department from the Loss Reserve Account, as described in OAR 123-018-0060, and

(b) As provided for in OAR 123-018-0150.

(3) When there are insufficient funds in the Loss Reserve Account to cover the total amount of a Loss claim, the Department shall pay an amount equal to the balance of the Loss Reserve Account. This payment will fully satisfy the claim and the Participating Financial Institution will have no further right to receive any other amount with respect to such claim.

(4) The Department shall reimburse Loss claims in the order it receives them. If a Participating Financial Institution files two or more Loss claims simultaneously and there are insufficient funds in the Loss Reserve Account to pay them, the Participating Financial Institution may designate the order the Loss claims are to be paid by the Department.

Stat. Auth.: ORS 285A.075 & 285B.135(3)

Stats. Implemented: ORS 285B.135, 285B.138 & 285B.141

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08

123-018-0160

Termination of and Withdrawal from Program

(1) The Department may terminate enrollment of Qualified Loans under the Program for a Participating Financial Institution on the date specified in the Department's notice of termination to the Participating Financial Institution, or for all Participating Financial Institutions under the Program upon 90 days notice, or such earlier date should the balance in the Fund reach zero, or should the Department anticipate that the balance in the Fund will reach zero. Termination shall not apply to any Qualified Loans made before the date of termination.

(2) Should a Loss Reserve Account have a zero balance, the Department may terminate the Agreement at its sole discretion.

(3) A Participating Financial Institution may withdraw from the Program after giving written notice to the Department. After receipt of this notice, the Department shall determine when to withdraw any remaining balance in the Participating Financial Institution's Loss Reserve Account.

Stat. Auth.: ORS 285A.075 & 285B.135(3)

Stats. Implemented: ORS 285B.135 & 285B.147

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08

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Rule Caption: Conform Regional Board/Partnership/Investment Strategy rules to current statute.

Adm. Order No.: EDD 7-2008(Temp)

Filed with Sec. of State: 3-4-2008

Certified to be Effective: 3-4-08 thru 8-31-08

Notice Publication Date:

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

Subject: The temporary rule conforms administrative rule to current statute, as well addresses the legislative direction from the 2008 Supplemental Session regarding the expenditure of remaining funds that were allocated during the 2007 Legislative Session.

Rules Coordinator: Paul J. Grove—(503) 986-0192

123-055-0100

Purpose and Scope

In implementing the Regional Economic Development Act under ORS 285B.230 to 285B.269, this division of administrative rules is intended to clarify, facilitate and establish the following key pieces in the suc-

cessful design, deliberation, execution and updating of a long-term planning framework for achieving economic development results:

(1) Regional associations and consensus among counties of this state;

(2) Boards of citizens for strategic planning and oversight of funded activities;

(3) Special, broad-based partnership arrangements to augment and, in some cases, to act as an umbrella for county-appointed boards;

(4) Processes for public development and approval of the locally determined investment Strategies; and

(5) Statewide interaction and support.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.230 - 285B.269

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 7-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-055-0120

Definitions

For purposes of this division of administrative rules, unless the context demands otherwise:

(1) **Commission** means the State of Oregon Economic and Community Development Commission established by ORS 285A.040.

(2) **County-based Region** means a Region established by formal recognition of the Department on the basis of county government initiative, without a Regional Partnership.

(3) **Department** means the State of Oregon Economic and Community Development Department as organized under ORS 285A.070.

(4) **Director** means the director of the Department as appointed under ORS 285A.070.

(5) **Fiscal Entity** means a unit of local government, intergovernmental entity or nonprofit corporation jointly designated by the governing bodies of the counties comprising the Region and responsible for assisting the Regional Board in developing, implementing and administering the Investment Strategy, such that:

(a) If the governing bodies of the counties comprising the Region establish the Regional Board as an intergovernmental entity, the Regional Board may be the Region's Fiscal Entity; and

(b) The Fiscal Entity must in all cases have the authority and legal power to enter into a contract with the Department for receipt of Regionally Controlled Funds and with other entities receiving such funds as authorized by the Regional Board pursuant to and for purposes of the Investment Strategy.

(6) **Investment Strategy** means the document described under ORS 285B.239 and prepared by the Regional Board under ORS 285B.242, in accordance with OAR 123-055-0300 to 123-055-0399.

(7) **Partnership-based Region** means a Region for which:

(a) A Regional Partnership is associated with the Regional Board through and with agreement of the county partners; and

(b) Its specific geographic area essentially coincides with that of the Regional Partnership. (This definition in no way limits the types or purposes of Regional Partnerships).

(8) **Region** means a geographic area under ORS 285B.230(1), as described in OAR 123-055-0200, and represented by a Regional Board that prepares and submits an Investment Strategy. It may be either a County-based Region or a Partnership-based Region.

(9) **Regional Board** means a group of individuals appointed by county courts and boards of county commissioners under ORS 285B.230(2) and 285B.242(1), as described in OAR 123-055-0200 to 123-055-0299.

(10) **Regional Partnership** means an association under ORS 285B.230(4), formed by agreement of local and regional partners with the requisite agencies of the state government. It includes but is not limited to a Partnership-based Region.

(11) **Regionally Controlled Funds** means the Regional Investment Fund described in Division 057 of this chapter of administrative rules, and the moneys allocated, disbursed or expended thereunder for the projects of a particular Region, and all interest earned on such money by or for the Region. This term shall in no way be interpreted as affecting resources from any other fund or program under state law or associated with the Department.

(12) **Multi-Region Project** means a project that has a demonstrable economic impact in more than one Region where two or more Regional Investment Boards participate in the funding of the project.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.230 - 285B.269

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-

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2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 7-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-055-0200

Formation and Reconfiguration

(1) Prior to designating a County-based Region, the Department shall do the following:

(a) Communicate with and assist representatives of county governments with considerations in forming a Region, which may include special meetings, fora, etc.; and

(b) Receive materials and advice from the counties' governing bodies, describing the Region's geographic area and the historical, cultural and economic linkages that underpin and justify its creation, including regional planning activities that already exist.

(2) The geographic area of a County-based Region may not include any area in another Region and shall consist of the following:

(a) Two or more counties;

(b) The entire area of the counties comprising the Region, unless the remaining portion of a county is contained in a Partnership-based Region; and

(c) A common border between at least two member counties, although any other county in the Region need not be contiguous to any or all of the other counties.

(3) Each Regional Board and its members, as well as the associated Fiscal Entity, operate in the public trust and shall comply (in relevant part or in entirety) with state and local statutes, laws and regulations for the following, and are solely responsible for legal adherence.

(4) A Partnership-based Region is not bound by section (1) or (2) of this rule, and may encompass any geographic area consistent with the participation/involvement of relevant sub-county partners. The Department shall recognize it, insofar as it:

(a) Contains no area of another Region;

(b) Includes area in at least two counties; and

(c) Is clearly described in or as part of the Regional Partnership memorandum of understanding or associated information as provided to the Department.

(5) In order for any county area to be divided among two or more Regions:

(a) At least part of the county must be in a Partnership-based Region;

(b) The county's governing body must be a party to each applicable agreement in OAR 123-055-0240 and must appoint one or more members to the respective Regional Boards; and

(c) No such constituent part of the county may be attached to a Region as established or recognized by the Department, until all such parts are associated with an acknowledged Region.

(6) Regions may be reconfigured pursuant to the mutual consent of all affected counties (and partners of an ongoing Regional Partnership), and subject to the preparation, modification or amendment and approval of an Investment Strategy or Strategies for the new/reconfigured Region(s).

Stat. Auth.: ORS 285A.075, 285B.236(1)

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

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 7-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-055-0220

Board Composition and Implications

(1) Every Region must have a Regional Board, whose members are:

(a) Named individuals appointed by the governing bodies of the counties, through any method of the bodies' choice, including by clear arrangement or extension of a Regional Partnership; and

(b) Effective representatives of the interests prescribed under ORS 285B.242(1).

(2) Each Regional Board and its members, as well as the associated Fiscal Entity, operate in the public trust and shall comply (in relevant part or in entirety) with state and local statutes, laws and regulations for the following, and are solely responsible for legal adherence and mandatory actions thereunder, regardless of any assistance provided by or through the Commission or Department:

(a) Public bodies, meetings and records (ORS Ch. 192);

(b) Government standards and practices (ethics, ORS Ch. 244);

(c) Public contracting and procurement (ORS Ch. 279A, 279B & 279C);

(d) Public funds (ORS Ch. 295);

(e) Minimum wage and hour standards;

(f) Municipal budgeting and audit laws; and

(g) Other similar matters.

Stat. Auth.: ORS 285A.075 & 285B.236(1)

Stats. Implemented: ORS 285B.230 & 285B.242

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 7-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-055-0240

Regional Accords and Fiscal Entities

(1) The governing bodies of the counties comprising a Region shall jointly enter into a written agreement forming the Region and specifying applicable elements as follows:

(a) The size, makeup and organization of the Regional Board and the methods for nominating and appointing its members by the governing bodies;

(b) Indication of a Regional Partnership in the case of a Partnership-based Region;

(c) Any special name to be used in reference to the Region;

(d) Procedures, policies, duties and authority for the activities of the Regional Board and for the preparation and implementation of the Investment Strategy;

(e) If desired by the governing bodies of the counties comprising the Region, establishment of the Regional Board as an intergovernmental entity under ORS 190.010(5), 190.080 and 190.085 and designation of the Regional Board as the Region's Fiscal Entity; or

(f) Any other matters deemed appropriate by the governing bodies.

(2) If the agreement described in section (1) of this rule establishes the Regional Board as an intergovernmental entity and designates the Regional Board as the Region's Fiscal Entity, that agreement shall also specify the following:

(a) The authority, duties and functions of the Regional Board in its capacity as the Fiscal Entity for Region;

(b) The Regional Board's financial responsibility and budgetary processes with respect to Regionally Controlled Funds; and

(c) Contractual terms and other relevant administrative or fiduciary issues.

(3) If the Regional Board is not established as an intergovernmental entity that acts as the Region's Fiscal Entity, then the governing bodies of the counties comprising the Region shall jointly designate the Fiscal Entity for the Regional Board and enter into an agreement with that Fiscal Entity (preferably, one that is subsequent to and separate from the agreement described in section (1) of this rule) that specifies the following:

(a) The corporate/legal identity, role, function and duties of the Fiscal Entity for purposes of assisting the Regional Board in developing, implementing and administering the Investment Strategy;

(b) Powers and responsibilities of the Regional Board over the Fiscal Entity;

(c) The authority, financial responsibility and budgetary processes of the Fiscal Entity with respect to decisions by the Regional Board and with respect to the receipt and use of Regionally Controlled Funds; and

(d) Contractual terms and other relevant administrative or fiduciary issues.

(4) The governing bodies of the counties comprising the Region shall jointly notify the Department in writing, as soon as reasonably possible, of the following:

(a) The identity of the Fiscal Entity; and

(b) Any actual or formally contemplated change in the designated Fiscal Entity.

(5) Alternatively for sections (3) and (4) of this rule, the Regional Board may directly designate and contract with the Fiscal Entity, and notify the Department accordingly, if it is established as an intergovernmental entity but not as the Region's Fiscal Entity.

(6) Other agreements that supplement or incorporate what is described in this rule may be executed as necessary and appropriate, especially for a Partnership-based Region.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.230 - 285B.269

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 7-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-055-0300

Content of Regional Investment Strategy

The regional investment program is intended to identify, address and coordinate economic development priorities, as well as coordinate public and private resources, in accordance with ORS 285B.233. Therefore, an Investment Strategy shall explicitly do the following:

(1) Address the statewide economic development strategy outlined in ORS 285A.020(3) to:

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(a) Promote a favorable investment climate to strengthen businesses, create jobs and raise real wages;

(b) Improve the national and global competitiveness of Oregon companies; and

(c) Assist Oregon communities in building capacity to retain, expand and attract businesses.

(2) Focus on priorities identified by the Regional Board, along with the following priorities, as taken from ORS 285B.230(3):

(a) Promote the structures and processes of public and private organizations to effectively create, adapt, foster and sustain economic development in this state, emphasizing rural and distressed areas;

(b) Ensure that economic strategies will reinforce Oregon's long-term prosperity and livability; and

(c) Coordinate economic development efforts and efforts to support a locally skilled workforce in order to compete in the global economy.

(3) Address required elements in the form of an Investment Strategy pursuant to ORS 285B.239, including a Rural Action Plan based on the Strategy development handbook titled, "Elements of a Regional Investment Strategy" prepared by the Department.

(4) Demonstrate in measurable terms the extent to which, as well as how, the priorities in section (1-2) of this rule will be accomplished, as required under ORS 285B.236(2), by relating these to the regional performance measurements and regional benchmarks in the Investment Strategy under ORS 285B.239(h) and to Regional Performance Measures as described in OAR 123-055-0620.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285A.020, 285B.230, 285B.233, 285B.236 & 285B.239

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 7-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-055-0340

Using Other Planning Exercises

Regions are encouraged to take advantage of other planning activities or sources of helpful guidance that exist in association with federal programs or resources, at the local level and in other circumstances, such that:

(1) In preparing and developing an Investment Strategy, a Regional Board may borrow and rely on technical resources and methods for strategic or economic planning, or the Region may integrate and make reference to recently completed planning work, including those associated with but not limited to the following:

(a) U.S. Economic Development Administration;

(b) U.S. Empowerment Zone/Enterprise Community Initiative; or

(c) Local comprehensive land use plans.

(2) In using models or relevant work as indicated in section (1) of this rule, the Regional Board shall ensure that all of the elements required under ORS 285B.230 to 285B.269 for a complete Investment Strategy are still included therein and are easily identified or identifiable through use of a key or other instructions in the primary document that the Region adopts.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.230 - 285B.269

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 7-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-055-0400

Plan Development, Approval, Implementation and Update For purposes of developing Investment Strategies

(1) The Department shall extend reasonable assistance to each Regional Board, its members and its Fiscal Entity, which may include provision of program guidance, attendance at local meetings or contact information for relevant organizations or government agencies, as the Department's time and resources permit. The Department shall guide in the development of Investment Strategies and shall assist with information gathering for any Region, if so requested by the Board Chair.

(2) For all Regions:

(a) In addressing the general preparation and substance of the Investment Strategy, the Regional Board shall provide opportunity for consultation with applicable representatives in the Region from the following:

(A) Private industries, the for-profit business community, the non-profit sector and workforce committees;

(B) Local/city governments and public service providers, including ports and other special districts;

(C) Tribal governments or councils; and

(D) State and federal agency partners, especially those listed under ORS 285B.230(4).

(b) The Regional Board may work with the Department in the refinement of the Investment Strategy through drafting stages and to ensure com-

pliance with applicable statutes and addressing priorities outlined in OAR 123-055-0300.

(c) Public hearings shall be scheduled and conducted, as follows:

(A) A public hearing shall be held by each county governing body in the Region, after published notice, in accordance with the county's adopted public notice requirement, inviting public comments on the proposed Investment Strategy. After the public hearing in that county, the governing body shall take formal action on the adoption of the Investment Strategy.

(B) The Investment Strategy shall be made available to the public for inspection during the public notice period preceding the public hearing.

(d) In order for the final Investment Strategy to be regionally adopted, it must be approved by motion or resolution of the following:

(A) All of the counties in the Region (by a majority vote of each county governing body, as specified in the county charter); and

(B) The Regional Board (pursuant to its own procedures or bylaws).

(3) In response to a recommendation from the Department, Commission, or Regional Partnership, an Investment Strategy that has been regionally adopted may be modified, amended or appended by the Regional Board if the county governing bodies in the region, by formal action, authorize the Regional Board to make non-substantive or minor changes.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.242

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 7-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-055-0420

Review/Approval by Commission or Through Regional Partnership

The Regional Board shall provide a complete copy of the regionally adopted Investment Strategy, as developed and adopted consistent with OAR 123-055-0400, to the Department, at which point the Investment Strategy shall be handled according to either section (1) or (2) of this rule:

(1) Review and approval shall be done through a Regional Partnership, such that:

(a) These functions have been delegated to the Regional Partnership either by communication from the Commission to the Director or by a joint recommendation of the state agency directors under ORS 285B.230(4) (or their regional designees);

(b) The review and approval of the Investment Strategy proceeds according to the Regional Partnership's discretion and criteria, including but not limited to compliance with all applicable statutes; and

(c) Final approval of the Investment Strategy is formally submitted to the Commission or the state agency directors under ORS 285B.230(4) (or their regional designees) for recognition by the Department.

(2) Without delegation under subsection (1)(a) of this rule, review and approval shall proceed as follows:

(a) The Department examines the Investment Strategy to ensure compliance with applicable statutes and may seek and obtain missing or corrected information, as necessary, from the Regional Board;

(b) The Department submits the Investment Strategy to the Commission with summaries or assessments, as are appropriate or requested by the Commission;

(c) The Commission considers the submission by the Department and;

(d) Pursuant to any consultation that it chooses to have with the Regional Board, the Commission takes action either by returning the Investment Strategy to the Regional Board with instructions for modification or granting final approval of the Investment Strategy.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.242

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 7-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-055-0440

Strategy Implementation and Six-Year Update

Once approved as described in OAR 123-055-0420:

(1) An Investment Strategy shall be implemented at the direction and by authority of the Regional Board, in cooperation with a Regional Partnership as applicable, such that:

(a) The Department shall assist with implementation, as staff resources and time permit, especially for purposes of coordination with resources at the Department's disposal;

(b) Leverage of resources and opportunities other than Regionally Controlled Funds are to be continually considered for effectively and efficiently achieving economic development results; and

(c) Measuring and reporting progress, spending and so forth under the Investment Strategy shall be integral to implementation.

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(2) An Investment Strategy is a living document, and at a minimum every six years, the Regional Board shall revise it as necessary and improve it wherever suitable. The revised and updated Investment Strategy shall be developed and approved consistent with OAR 123-055-0400 and 123-055-0420.

Stat. Auth.: ORS 285A.075, 285B.236(1)
Stats. Implemented: ORS 285B.242, 285B.245
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 7-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-055-0460

Relationship of Plan to Regionally Based Funding

For purposes of disbursing Regionally Controlled Funds to a Region, in accordance with Division 057 of this chapter of administrative rules:

(1) All disbursements of Regionally Controlled Funds will be made to the Region's Fiscal Entity, as designated in accordance with OAR 123-055-0240.

(2) Except for moneys described in OAR 123-057-0330 or 123-057-0430, the Department may make such disbursements only pursuant to final approval of the Investment Strategy.

(3) Such disbursements further depend on an effective and enforceable contract between the Department and the Fiscal Entity, as described in OAR 123-057-0170 and will not be made without such a contract.

(4) If a Region fails to adopt, submit or have an Investment Strategy finally approved, it may not receive its counties' Regionally Controlled Fund allocations, and the Department at the end of the biennium may proportionally reallocate such moneys to other Regions.

Stat. Auth.: ORS 285A.075, 285B.236(1)
Stats. Implemented: ORS 285B.230 - 285B.269
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 7-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-055-0525

Relationship of Local Entities to Partnership

For purposes of Regional Partnerships under ORS 285B.230(4):

(1) The memorandum of understanding among local partners and the directors of the seven state agencies may take the form of two or more agreements or memoranda for purposes of establishing certain structures, objectives and efforts of the Regional Partnership.

(2) The local partners may join together under separate arrangements to form a mutual agreement as a unit, in order to achieve the following or comparable purposes:

(a) Simplify and more efficiently execute an agreement or memorandum between such unit and the directors of the seven state agencies; and

(b) Allow for designation of one or more representatives of the local partners to do the following:

(A) Act on behalf of that unit (or the union between that unit and the seven state agencies); and

(B) Interface with a fiscal agent for handling moneys (though not Regionally Controlled Funds) on behalf of that unit, regardless of whether this fiscal agent is the same as the Fiscal Entity for a corresponding Partnership-based Region.

(3) Not all of the local partners as indicated in ORS 285B.230(4) need to be included in a Regional Partnership, but shall participate only as interested. However:

(a) The county governments, as well as the major cities that are central to the regional economy, are expected to be part of the Regional Partnership; and

(b) No local partner that has a significant and applicable presence in the Regional Partnership's area shall be excluded if expressing a clear desire to actively participate in the general business of the Regional Partnership, prior to its formation. A Regional Partnership may make accommodations for revising its composition, whenever it redefines its basic objectives.

Stat. Auth.: ORS 285A.075, 285B.236(1)
Stats. Implemented: ORS 285B.230
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 7-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-055-0620

Regional Performance Measures and Periodic Performance Reports by Region

In direct relation to the regional benchmarks established in the Investment Strategy under ORS 285B.239(h):

(1) Every Regional Board shall identify quantitative targets for regional performance measures that measure and evaluate the accomplish-

ments of the Region's adopted priorities, including target goals for measuring:

(a) Long-term and short-term job creation and retention, including the number of jobs created and retained and wage levels.

(b) Leveraging long-term investments.

(c) Maximizing moneys leveraged with short-term investments;

(2) Every Regional Board shall propose criteria for the use, distribution and evaluation of its investment funds consistent with its adopted and approved Implementation Strategy.

(3) The proposed regional performance measures and distribution criteria shall be submitted to the Department for review by the Commission, which may recommend changes to the Regional Board, such that the Regional Board may adopt the recommendation or make counter-proposals to the Commission, and so forth, or other procedures may be arranged for negotiating regional performance measures and distribution criteria between the Commission and the Region or Regions, in order to finalize regional performance measures and distribution criteria, which the Commission may ultimately resolve as necessary.

(4) In addition to sections (1) to (3) of this rule, the Commission and the Department may develop models or methods to coordinate and facilitate the adoption and use of regional performance measures and distribution criteria by Regions at their discretion, and as the time and resources of the Commission or Department allow.

(5) Each report required under this rule shall be submitted to the governing bodies of the counties comprising the Region, the Commission, the Governor, the Legislative Assembly, the Department and other parties of the Regional Board's choosing.

(6) Periodically as determined and described by the Department, every Regional Investment Board shall in accordance with ORS 285B.239(i) to submit reports on regional performance measures allowing the Department, the Commission, the Legislature and the Governor to evaluate the effectiveness of each regions implementation strategy and ensuring the resources are being effectively used.

(7) The reports shall, at a minimum, relate to and be integrated with the Regional Board's biennial report to the Governor, Commission and the Legislative Assembly on the expenditure of Regionally Controlled Funds under 285B.263(6).

Stat. Auth.: ORS 285A.075, 285B.236(1)
Stats. Implemented: ORS 285B.239
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 10-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 7-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-055-0900

Waiver of Provisions Not Required by Statute

The Director or the Director's designee may waive non-statutory requirements of this division of administrative rules, if demonstrated to the satisfaction of the Director that such a waiver serves to further the goals and objectives of ORS 285B.230 to 285B.269, and that it contributes to sound economic or community development.

Stat. Auth.: ORS 285A.075, 285B.236(1)
Stats. Implemented: ORS 285B.230 - 285B.269
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 7-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

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Rule Caption: Conform the regionally Based Funds (Div. 57) rules to existing statute.

Adm. Order No.: EDD 8-2008(Temp)

Filed with Sec. of State: 3-4-2008

Certified to be Effective: 3-4-08 thru 8-31-08

Notice Publication Date:

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

Rules Suspended: 123-057-0310

Subject: The temporary rule conforms administrative rule to existing statute, as well addresses the legislative direction from the 2008 Supplemental Session regarding the expenditure of remaining funds allocated during the 2007 Legislative Session.

Rules Coordinator: Paul J. Grove—(503) 986-0192

ADMINISTRATIVE RULES

123-057-0110

Purpose and Scope

This division of administrative rules is intended to establish technical clarity for the actual allocation, distribution, uses and evaluation of a Regional Board's past performance of their implementation Strategies with moneys from the Regional Investment Fund for effective implementation of long-term regional Investment Strategy in addition to other available resources.

Stat. Auth.: ORS 285A.075, 285B.236(1), & 285B.263(2)

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

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-057-0130

Definitions

For purposes of this division of administrative rules, the definitions described in OAR 123-055-0120 apply. Moreover, unless the context demands otherwise:

(1) **Fixed Assets** mean plant, equipment or other tangible assets of an individual private business that have a useful life lasting longer than one year, and that are normally subject to depreciation for income tax purposes.

(2) **Grant Contract** means the contract between the Department and the Fiscal Entity for disbursement of Regionally Controlled Funds to the Region, as described in OAR 123-057-0170.

(3) **Strategic Regional Investment Opportunity Fund project** means a project or activity funded in collaboration by the department and regional boards, as determined under ORS 285B.263(2), to award projects or activities

(4) **Regional Fund** means the Regional Investment Fund under ORS 285B.260 and 285B.263.

Stat. Auth.: ORS 285A.075, 285B.236(1), & 285B.263(2)

Stats. Implemented: 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-057-0150

Allocation to Regions

For purposes of allocating moneys from the Regionally Controlled Funds to each Region for a biennium:

(1) The Department shall in communication with interested parties devise a methodology for apportioning such moneys among all 36 counties, so that Regions may align as is most suitable for serving their needs and relationships.

(2) This methodology shall utilize demographic, economic, financial or other data and statistics to appropriately and effectively capture both the relative size and economic conditions of the counties and thus the Regions that comprise them.

(3) The Department shall report the methodology to the Commission for consideration.

(4) The Department shall review and may make improvements to the methodology with each biennium.

(5) In the case where a Region subdivides a county, the splitting of funds allocated to that county shall be determined by agreement among the Regions that contain parts of the county, and the county in question shall provide the Department with ratios for disbursement to the respective Fiscal Entities, such that:

(a) The ratios for the Regional Fund shall not greatly deviate from those of the relative population in each part of the county; and

(b) The Department shall disburse no moneys to any affected Region until the ratios have been determined and reported, as described in this section.

Stat. Auth.: ORS 285A.075, 285B.236(1), & 285B.263(2)

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

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-057-0190

General Availability and Use of Funds

Subject to the Grant Contract:

(1) No moneys shall be disbursed to the Fiscal Entity until the Investment Strategy or its relevant update has been finally approved in accordance with division 055 of this chapter of administrative rules, except as described in OAR 123-057-0330 and 123-057-0430.

(2) Unless otherwise directed by the Department, Regionally Controlled Funds that are received by the Region through the Fiscal Entity shall be promptly returned to the Department:

(a) If not obligated by formal action of the Regional Board on or before July 1, one year after the end of the biennium; and

(b) If unexpended at the termination or expiration of the Grant Contract.

(3) Public entities that directly or indirectly receive Regionally Controlled Funds shall comply with public procurement guidelines, minimum wage and hour standards, municipal budget and audit laws, and other applicable state and local regulations.

(4) The Department's payment of Regionally Controlled Funds is subject to the availability of money in the Regional Fund. Regions shall proportionately share in any shortfall of lottery revenue.

(5) The Fiscal Entity shall maintain records of all activities associated with the Investment Strategy and expenditures of Regionally Controlled Funds. The Department is entitled to monitor the Fiscal Entity's records to verify compliance with the Grant Contract.

Stat. Auth.: ORS 285A.075, 285B.236(1), & 285B.263(2)

Stats. Implemented: 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-057-0210

Common Requirements

Regionally Controlled Funds for implementing the Investment Strategy shall be obligated and expended subject to the Regional Board's evaluation of the merit and readiness of the project, in accordance with the adopted project selection criteria and subject to the consistency of the project with the priorities of the Investment and implementation Strategy, such that:

(1) All projects or activities funded meet the funding criteria as set forth in the Investment Strategy approved by the Commission to ensure funded projects and activities are in compliance 285B.239(1)(a)-(j) and in accordance with OAR 123-055-0620.

(2) The expenditure of the Regional Controlled Funds must be authorized by the Regional Board, according to the Region's procedures governing such authorization.

(3) Regionally controlled funds shall not be used as prohibited in OAR 123-057-0230.

(4) Any activity or project funded through this division of administrative rules shall indicate that it is state lottery-funded and authorized by the Regional Board in all public documentation and on a publicly visible sign associated with any project involving construction activity. The sign shall be provided by the Regional Board funding the project and the sign shall be approved by the Department prior to placing the sign at the project site.

(5) Any public facility, as defined in ORS 447.210, for which construction costs are in any part paid for with Regionally Controlled Funds, shall be accessible to and made useable by handicapped persons in accordance with the U.S. Americans with Disabilities Act of 1990 (Public Laws 101-336).

(6) Any activity paid for in whole or in part with Regionally Controlled Funds that affects physical development of land shall comply with the applicable requirements of division 008 of this chapter of administrative rules, this state's land use laws and the local comprehensive plan.

(7) An individual private business receiving direct or substantial benefits from Regionally Controlled Funds may be required to comply with Division 070 of this chapter of administrative rules for entering into a first-source hiring agreement, but only if required by the Regional Board in the Investment Strategy.

(8) Regionally Controlled Funds may only be provided to private for-profit businesses for a project and activity, whether as a grant or a loan, if that project and activity is consistent in its own right with an activity specified in the Investment Strategy (apart from any general objective for financially inducing business development, recruitment or expansion) in accordance with ORS 285B.263(4).

Stat. Auth.: ORS 285A.075, 285B.236(1), & 285B.263(2)

Stats. Implemented: ORS 285B.245, 285B.260, 285B.263 & 461.740

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-057-0230

Common Prohibitions

Regionally Controlled Funds may not be used to do any of the following:

(1) Retire any debt;

ADMINISTRATIVE RULES

(2) Reimburse any person or municipality for expenditures made or expenses incurred before final approval of the Investment Strategy, except for preparation and administration as described in 123-057-0430;

(3) Substitute for available budgeted resources in supporting ongoing public services or infrastructure that already exist, but rather shall support only new or enhanced local services benefiting the Region's capacity for economic development;

(4) Maintain existing staff of a public or private entity, except for staff time dedicated to:

(a) The administrative needs of the Investment Strategy or the Regional Board;

(b) Redirected or augmented efforts consistent with the Investment Strategy, such as new technical assistance for enhancing regional coordination or local economic development activities/capacity; or

(c) Continue to fulfill objectives or activities of the Investment Strategy as initiated in a previous biennium; or

(5) Assist in any way with the relocation of a business facility within this state from one labor market area to another, unless:

(a) The job losses in the originating labor market area are less than or equal to 0.1 percent of the most recently available estimate for the civilian labor force therein; or

(b) The relocation entails an improvement in the quality and a significant increase in the size of the business's total in-state employment, without being detrimental to any rural area, subject to determinations of the Department.

Stat. Auth.: ORS 285A.075, 285B.236(1), & 285B.263(2)

Stats. Implemented: ORS 285B.245, 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-057-0310

Objective and Geography

(1) The Rural Fund, as generally allocated by the Commission, provides a flexible source of financial assistance to benefit rural communities and to help them undertake locally-determined economic development projects and programs, potentially ineligible for support through other state or federal sources. It is intended to offer a vehicle by which Regional Boards can leverage other funding sources to the maximum extent possible for improving the economies of rural areas.

(2) The Rural Fund proportion of a project's funding out of Regionally Controlled Funds shall not significantly exceed the project's relative benefit for persons or communities in rural areas, as estimated by the Regional Board when authorizing the project.

(3) Location of the Rural Fund project or activity in a rural area is required, only if significant benefits accrue to the immediate vicinity where the project or activity takes place.

(4) A Regional Board may focus more strategically in defining what is meant by Rural@ for purposes of its Region, but as used in this division of administrative rule, Rural areas@ mean those parts of this state that are outside of:

(a) The acknowledged Portland Metropolitan Area Regional Urban Growth Boundary; and

(b) The acknowledged urban growth boundaries of cities with population of 30,000 or more, including Albany, Bend, Corvallis, Eugene, Springfield, Salem, Keizer or Medford.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.254(3)

Stats. Implemented: ORS 285A.010, 285B.254 & 285B.257

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; Suspended by EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; Suspended by EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-057-0330

Rural Set Aside

Moneys dedicated to the Rural Set Aside, as described in ORS 285B.239(2), shall be used for funding eligible activities in the Rural Action Plan as a part of the Investment Strategy as described in ORS 285B.239, such that:

(1) The amount of money dedicated to the Rural Set Aside is determined by the Regional Board prior to awarding funds for projects.

(2) The amount of money so dedicated each biennium to the Rural Set Aside is sufficient to adequately implement the Rural Action Plan in that biennium.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.239

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-057-0350

Rural Action Plan

(1) The rural action plan is an element of the Investment Strategy, and shall be reviewed and approved in the context of the six-year Investment Strategy subject to satisfaction of OAR 123-055-0400 and 123-055-0420.

(2) The rural action plan may merely refer to and highlight other Investment Strategy elements if the Investment Strategy is entirely or mostly oriented towards rural areas.

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.239

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 8-2000(Temp), f. & cert. ef. 5-2-00 thru 9-30-00; EDD 13-2000, f. & cert. ef. 8-15-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-057-0410

Components

(1) The Regional Fund is used for the following:

(a) Technical assistance and staff support for preparation and update of the Investment Strategy and for development and administration of a Regional Partnership;

(b) Personnel and expenses for administering the Investment Strategy and its implementation; and

(c) Projects and activities implementing an approved Investment Strategy.

(d) Other activities consistent with the adopted Investment Strategy in accordance with ORS 285B.239

Stat. Auth.: ORS 285A.075, 285B.236(1) & 285B.263(2)

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

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-057-0430

Dedicated to Strategy Preparation

As determined by the Commission, a maximum percentage of the moneys from the Regional Fund in each biennium may be dedicated by a Regional Board for preparation of the Investment Strategy and for support of a Regional Partnership, such that:

(1) The maximum limit established by the Commission is expressive-ly included in the Grant Contract;

(2) The Department shall take reasonable efforts to make such moneys available prior to approval of the Investment Strategy, including but not limited to executing the Grant Contract and specifically disbursing such moneys through it;

(3) The moneys may only be used for technical assistance and staff support for:

(a) Development and refinement of the Investment Strategy; or

(b) Development and administration of a Regional Partnership; and

(4) Such moneys may be spent on relevant work and expenses incurred prior to disbursement of the funds or final approval of the Investment Strategy, regardless of OAR 123-057-0230(2).

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-057-0450

Guidelines for Financing Fixed Asset Acquisitions of Private Businesses

For purposes of grants or loans from the Regional Fund to individual private businesses for the acquisition of Fixed Assets, under ORS 285B.263(4), to complement existing public and private financing:

(1) Only a portion (not all) of the moneys for projects and activities in any biennium may be used for such purposes, including but not limited to the capitalization of a revolving loan fund or funds for private business projects.

(2) The Investment Strategy must contain the terms and conditions for such grants or loans, when the Investment Strategy is submitted for review pending final state-level approval, along with other provisions in the Investment Strategy applicable to relevant activities.

Stat. Auth.: ORS 285A.075 & 285B.236(1)

Stats. Implemented: ORS 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

ADMINISTRATIVE RULES

123-057-0470

Tourism and Industrial Marketing

For purposes of ORS 285B.245(1) and expending Regional Fund money for projects to market a Region for creating, expanding or retaining tourism or industrial activity, investments and related jobs:

(1) If a Region intends to use any of its Regional Fund allocation for such purposes, then the Investment Strategy must generally show how the projects to be funded will complement and will not conflict with statewide marketing campaigns and efforts aimed at travelers/tourists or at industrial investors, such that:

(a) This section may be fulfilled by describing procedural steps, criteria or the like for selecting and authorizing projects; and

(b) The Investment Strategy needs only to address the basic thrust of statewide campaigns, as they exist at the time that the Investment Strategy is locally adopted or updated in each biennium.

(2) Consistent with OAR 123-055-0600, the Department shall seek to coordinate such marketing efforts at the state and regional level, especially by emphasizing ways to effectively take advantage of each level's respective resources (or other types of resources).

Stat. Auth.: ORS 285A.075, 285B.236(1)

Stats. Implemented: ORS 285B.245

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-057-0510

Allocation

In each biennium: In accordance with ORS 285B.263(2) and 285B.266(3), the Department may allocate a specific portion of the Strategic Reserve Fund to be used as the Strategic Regional Investment Opportunity Fund.

Stat. Auth.: ORS 285A.075, 285B.236(1) & 285B.263(2)

Stats. Implemented: ORS 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-057-0530

Use and Criteria of Strategic Regional Investment Opportunity Project Moneys

In each biennium, the Commission may allocate funds from the Strategic Reserve Fund to create a Strategic Regional Investment Opportunity Fund. The Department shall allocate a portion of the Fund to each Regional Investment Board based upon consultation with Association of Oregon Counties, League of Oregon Cities, and Oregon Public Ports Association. This allocation shall:

(1) Ensure that each Strategic Regional Investment Opportunity Fund Project actualizes one or more of the following:

(a) The project is developed and brought forward to the Department by a Regional Partnership or Board, Business Development Officers or business partners;

(b) The project can demonstrate a significant private business investment, short or long term job creation or other long-term economic development impacts that results in job creation;

(c) Greater competitiveness and productivity by the Regions' traded-sector industries resulting in short term job creation or retention;

(d) The investment of these funds will close a critical gap in funding for eligible activities;

(e) Significant improvement in the variety, wage level and quality of jobs in the participating Regions;

(f) Collaboration with one or more industries or institutions that are important to the Regions' future:

(A) Eliminate barriers that impede competitiveness of existing businesses;

(B) Foster new or expanded businesses emerging in the Regions;

(C) Internationally market goods and services from the Regions; or

(D) Diversify the regional economies;

(i) Similar goals consistent with or conducive to statewide efforts and priorities for economic and community development.

(2) Insist that Strategic Regional Investment Opportunity Projects adhere to funding standards, as follows:

(a) By satisfying sound investment/underwriting principles;

(b) By combining with funds from private, local, regional, state or federal sources; and

(c) By ensuring that the project is ready to proceed in terms of delivering planned outcomes in a reasonable time, including but not limited to a thorough scope of work in the project application, contract and reporting

requirements as described in this rule, clear commitment of other resources and the absence of barriers to the project's timely commencement.

(3) Forbid Strategic Regional Investment Opportunity Fund Projects that amount to the following:

(a) A subsidy for ongoing capacity of an organization or for ongoing operation and maintenance of a facility;

(b) Open-ended efforts that lack a demonstrable and realistic plan for effectively concluding the project, generating future resources or ensuring the usefulness of any deliverables/capacity in the future; or

(c) A failure to demonstrate the criteria as described in Section 1(b) of this rule.

(4) The Department shall fund projects in accordance with the following:

(a) The Department shall facilitate the identification and undertaking of Strategic Regional Investment Opportunity Fund Projects, through communications and assistance to Regional Boards and Fiscal Entities through the Department's Business Development Officers. Regions seeking to access their allocated portion of the funds shall do so through their regionally assigned Business Development Officer.

(b) Strategic Regional Investment Opportunity Fund projects addressing projects that meet the criteria as described in this rule may be advanced for approval upon joint recommendation of a Regional Partnership or Regional Boards Response Committee and a Business Development Officer. If the project is recommended, the Business Development Officer will draft a staff recommendation for signature.

(c) Following approval of project funding, projects are assigned to the most appropriate Division within the Department to negotiate final project conditions if any, performance measures and to develop and execute contract documents. The contract will specify the process and timing of disbursements of funds, conditions for reporting results, terms for repayment of funds where appropriate and the process for project closeout.

Stat. Auth.: ORS 285A.075, 285B.236(1) & 285B.263(2)

Stats. Implemented: ORS 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

123-057-0710

General Guidance

For purposes of ORS 285B.263(6), each Region shall prepare and submit a biennial report to the Governor, Commission and Legislative Assembly:

(1) This biennial report shall be prepared and submitted in conformance with the following:

(a) Format and procedures that the Department may prescribe; and

(b) The Region's periodic performance reports and regional performance measures and distribution criteria including goals pursuant to OAR 123-055-0620 and ORS 285B.239.

(2) The final biennial report shall be due at a time determined by the Department in relation to each general session of the Legislature, and shall include information from prior biennia not covered in the previous biennial report, as well as the most currently available information for the ongoing biennium.

(3) The biennial report shall describe all expenditures of Regionally Controlled Funds and, where multiple state funds are invested in a job creation or retention projects such as Strategic Regional Investment Opportunity Fund projects, the department will:

(a) In some manner, differentiate and proportion between the funding sources when reporting these job creation projects to the Legislature.

(4) The biennial report shall indicate the success of projects and programs as funded or completed, not only in terms of the project or program itself, but also in terms of how each one contributes to:

(a) Carrying out the Investment Strategy as whole;

(b) Carrying out the Rural Action Plan specifically;

(c) Affecting performance measures and regional benchmarks specified therein; and

(d) Achieving identified priorities for regional economic priorities, as both defined in statute and by the Regional Board itself in the Investment Strategy.

(5) The biennial report may (in addition to information about expenditures of Regionally Controlled Funds and about funded projects) address the Regional Board and the Investment Strategy's general progress and impact, especially in coordination with other resources and entities.

(6) The biennial report shall indicate the success of projects and activities as funded in accordance with the regionally adopted, six-year Commission approved Investment Strategy and project funding criteria that has been established by the adoption of the strategy and goals as described

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in ORS 285B.239 thru 285B.263. The Regions will be evaluated by Department Staff in accordance with ORS 285B.239(1)(h)(A, B, C) and 285B.239(1)(i)-(j). If the Department determines the Region has funded projects not complying with the approved Investment Strategy, the Department shall reduce future allocations from the Regional Fund in a like percent of the funds spent on the projects not meeting the adopted criteria established by the Investment Strategy.

Stat. Auth.: ORS 285A.075, 285B.236(1)
Stats. Implemented: ORS 285B.260 & 285B.263
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08

Rule Caption: Conform the Economic Development Revenue Bond rules to existing statute.

Adm. Order No.: EDD 9-2008(Temp)

Filed with Sec. of State: 3-4-2008

Certified to be Effective: 3-4-08 thru 8-1-08

Notice Publication Date:

Rules Adopted: 123-011-0037

Rules Amended: 123-011-0030, 123-011-0035, 123-011-0040, 123-011-0045

Subject: The temporary rule implements and conforms the existing rule to the current statutory provisions governing Economic Development Revenue Bonds.

Rules Coordinator: Paul J. Grove—(503) 986-0192

123-011-0030

Application

(1) An Applicant desiring issuance of Economic Development Revenue Bonds must submit a complete application to the Department in a form approved by the Department.

(2) The application shall be received by the Department at least 21 days prior to the Finance Committee meeting at which the application will be considered. The Department may waive this requirement at its sole discretion.

(3) A non-refundable application fee is to be submitted with the application:

(a) A \$250 non-refundable application fee shall be paid by an Applicant seeking economic development revenue bond financing of \$500,000 or less;

(b) A \$500 non-refundable application fee shall be paid by an Applicant seeking economic development revenue bond financing greater than \$500,000.

(4) Application materials may be obtained from the Oregon Economic and Community Development Department, 775 Summer Street N.E., Salem, OR 97310.

Stat. Auth.: ORS 285A.075
Stats. Implemented: ORS 285B.320 - 285B.371
Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988 (Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 13-1990, f. & cert. ef. 6-7-90; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05; EDD 9-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 9-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08

123-011-0035

Determination of Eligibility

(1) The Department shall review the application.

(2) The Department shall make a recommendation to the Finance Committee to either approve or deny the application for eligibility for Economic Development Revenue Bonds. The review of the application will be based upon the standards set forth in this rule:

(a) The following economic activities are eligible for Economic Development Revenue Bonds, unless otherwise prohibited under subsection (b) of this section:

- (A) Manufacturing or other industrial production;
- (B) Agricultural development or food processing;
- (C) Aquaculture development or seafood processing;
- (D) Development or improved utilization of natural resources;
- (E) Research and development;
- (F) Destination resorts;
- (G) Convention and trade centers;
- (H) Construction of buildings for corporate headquarters;
- (I) Product distribution facilities;
- (J) Transportation or freight facilities;

(K) Scientific testing including, but not limited to, medical, clinical or engineering testing services;

(L) Sports facilities not otherwise prohibited under paragraph (2)(b)(D) of this rule;

(M) Nonprofit entities organized under Section 501(c)(3) of the U.S. Internal Revenue Code;

(N) Utilities, except electricity, to serve a designated, specified industrial site. General utility systems or systems which provide service primarily to residential or non-industrial commercial customers are not eligible;

(O) Other activities which represent a new technology or type of economic enterprise that the Finance Committee determines is needed to diversify the economic base of an area.

(b) Activities or projects that will not be considered for the issuance of Oregon Economic Development Revenue Bonds include:

(A) Retail businesses and shopping centers;

(B) Food service not part of a convention center or destination resort;

(C) Professional corporations for medicine, law, dentistry, or finance;

(D) Athletic, racquetball, handball clubs, amusement parks, or similar endeavors;

(E) Commercial office buildings except for corporate headquarters;

(F) Activities that maintain private memberships; are not open to the general public; or do not serve a broad cross section of the general public;

(G) Co-generation of electric power;

(H) Activities expressly ineligible under ORS 285B.323(1).

(c) The following serve as elaboration and clarification of activities which are eligible for Economic Development Revenue Bonds:

(A) "Destination Resort" may include incidental food service. This classification is not intended to include sleeping accommodations which otherwise would not assist the development of the tourist industry. Sleeping accommodations that do not include major convention meeting facilities or other major non-residential facilities are not eligible. Preferential treatment by the developer to any land purchaser is not allowed;

(B) "Convention Centers" may include sleeping accommodations, but approximately 1/3 of the total bond issue must be used for convention meeting facilities. Such facilities must have the capacity to seat a minimum of 300 people. However, the Finance Committee may approve financing for projects, as convention centers, consisting solely or primarily of sleeping accommodations, if the Applicant sufficiently demonstrates existing sleeping accommodations are inadequate for existing meeting facility space;

(C) "Corporate Headquarters" may qualify if the Applicant demonstrates it has at least one other facility subordinate to the facility for which eligibility is being requested. A minimum of 75 percent of the floor space must be allocated to the corporate headquarter function. Corporate headquarters do not include professional corporations for medicine, law, dentistry, or finance or office space to be leased to others;

(D) "Transportation" is not intended to include rolling stock or other highly moveable equipment operated by a carrier for hire;

(E) In deciding whether or not to approve economic development revenue bonding for a utility project, the Finance Committee may consider all relevant factors including but not limited to the utility company's published tariff schedules and construction and extension procedures as filed with the Oregon Public Utility Commission;

(F) "Pollution Control" equipment may qualify as part of projects that otherwise qualify under this rule. Where pollution control equipment costs are incidental to the total capital investment of the project, the Finance Committee may qualify such equipment, provided the Oregon Department of Environmental Quality concurs;

(G) "In-State Plant Relocations" not accompanied by an expansion of the applicant's business or employment, may be considered when the Applicant is able to demonstrate that:

(i) The relocation is caused by reasons beyond its control; or

(ii) The relocation will not cause a resulting loss of employment at the former site of the business; or

(iii) The relocation is necessary for the continued operation of the business.

(H) "Nonprofit entities" do not include religious, fraternal, or educational organizations;

(I) "Developer Project" may qualify. The Finance Committee shall have right of approval for each tenant occupying 25 percent or more of the leasable space. No more than 25 percent of the leasable space shall be leased to tenants relocating from another Oregon location, unless such relocation is accompanied by an expansion of the tenants' labor force. These conditions shall be incorporated into bond documents, shall survive closing and shall be enforceable for the term of the bond.

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(d) Public Purpose. The Applicant must demonstrate that a public purpose is served by the proposed economic development project through economic diversification, creation of new jobs including construction activity, construction occurring before it otherwise could or would, economic activity occurring during economic slumps, tax dollars remaining in the State, and increased productivity. The Applicant is encouraged to demonstrate as many public purposes for the proposed project as can be prudently shown;

(e) Prior to determining that an economic development project is an Eligible Project, the Finance Committee shall:

(A) Determine that the action is cost effective, considering both major public expenses and major public benefits;

(B) Find that the project involved is consistent with the Department's comprehensive policy and programs;

(C) Find that the project will produce goods or services which are sold in markets for which national or international competition exists, or if the project is to be constructed and operated by a not-for-profit organization, that the project will not compete with local for-profit businesses;

(D) Determine that the action is the best use of the moneys involved, considering other pending applications for those moneys;

(E) Provide for public notice of, and public comment on, the action. The public hearing is not a contested case hearing. Members of the public are invited to present written or oral testimony. Only Finance Committee members and Department staff will ask questions.

(F) Notify a senior official (such as mayor or city manager) of the city or county (if in unincorporated county property) where the project will be located about the project and the potential use of economic development revenue bonds.

(f) The Finance Committee may deny an application if the Applicant does not demonstrate, to the satisfaction of the Finance Committee, that the project is financially feasible;

(g) The Finance Committee may deny an application if the Applicant (or any of the principals in the Applicant) is subject to any existing, pending or threatened litigation or unasserted claim, unless such litigation or claim is fully disclosed to the Finance Committee and the arrangements for the settlement thereof are acceptable to the Finance Committee. In any case where such litigation or claim is unknown to the Finance Committee at the time project eligibility is granted or if such litigation or claim arises subsequent to a grant of project eligibility, the Finance Committee may rescind the project eligibility;

(h) The Finance Committee may make any reasonable requirement of the Applicant related to the administration of the Oregon Economic Development Revenue Bond Program, including requirements that would survive closing and be enforceable for the term of the bond.

(3) The Finance Committee shall issue a Resolution for Project Eligibility for each economic development project determined to be an eligible project. The term of eligibility shall last 12 months unless extended by the Department or the Finance Committee.

(4) Administrative rules in effect at the time the Finance Committee determines a project to be eligible shall continue to govern the project until the bonds have been redeemed, notwithstanding any contrary provision in any subsequently adopted administrative rule.

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

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.320 - 285B.371

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 1-1985(Temp), f. & ef. 2-26-85; EDD 3-1985, f. & ef. 6-28-85; EDD 5-1985(Temp), f. & ef. 10-4-85; EDD 6-1985(Temp), f. & ef. 10-22-85; EDD 1-1986, f. 1-28-86, ef. 2-1-86; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 13-1990, f. & cert. ef. 6-7-90; EDD 14-1994(Temp), f. & cert. ef. 11-10-94; EDD 4-1995, f. 4-28-95, cert. ef. 5-3-95; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05; EDD 9-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 9-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08

123-011-0037

Approval of Bond Closing Resolution

(1) Prior to the approval of bond financing for an eligible project, as evidenced by the commission's approval of a bond closing resolution, the commission shall:

(a) Determine that the project satisfies the applicable requirements of OAR chapter 123, division 8 (compliance with local land use planning requirements), as evidenced by documentation to be provided by the city or county (if in unincorporated county property) in which the project is located.

(b) Determine that the project involved is consistent with applicable adopted local economic development plans, as evidenced by documentation from the city or county.

(2) The applicant shall be responsible for obtaining the documentation described in (a) and (b) of this section.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.320 - 285B.371

Hist.: EDD 9-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08

123-011-0040

Extension

(1) The Department may extend the eligibility granted by the Finance Committee for up to six months if the Department determines that the project still constitutes an eligible activity and that there is a reasonable prospect of the bonds being issued within the six-month extension period. The Applicant must provide updated financial information, and a project status report to the Department, on a form approved by the Department, at least 14 calendar days before eligibility expires.

(2) The Finance Committee may extend eligibility if the Department denies extended eligibility or if the initial extension granted by the Department under section (1) of this rule has expired. The Finance Committee must determine that the project still constitutes an eligible activity, and that there is a reasonable prospect of the bonds being issued within the extension period. The applicant must provide updated financial information, and a project status report, as well as an application for extension, on a form approved by the Department, at least one month prior to the expiration date of the original or extended eligibility period. The Finance Committee may waive this time period under extraordinary circumstances.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.320 - 285B.371

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 1-1986, f. 1-28-86, ef. 2-1-86; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05; EDD 9-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 9-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08

123-011-0045

Fees

In addition to the application fee specified in OAR 123-011-0030(5):

(1) The Applicant shall pay to the Department at the time of initial bond closing a closing fee of 1/2 of one percent of the total bond issue for the project. This initial fee shall not exceed \$50,000 for any single bond issue or single project eligibility.

(2) For the Oregon Express Bond Program, the Applicant shall pay to the Department at the time of the initial bond closing a fee of 1/4th of one percent of the total bond issuance for the project.

(3) An Applicant for a current refunding of an outstanding bond shall pay to the Department a processing fee of \$250 that shall accompany the request for the refunding.

(4) The Applicant shall pay to the Department a closing fee of 1/10 of one percent of the amount of the refunding bond or for any additional bonds issued under a single project eligibility. This closing fee may be waived for any refunding bond issued within 18 months of the closing date of the bond issue to be refunded.

(5) The Department may charge any out-of-pocket expenses, including but not limited to legal expenses, incurred by the Department for processing any bond request.

(6) The commission may collect the above fees and expense reimbursements from an applicant that seeks to have an economic development project declared eligible for financing, even though the project has not been determined to be eligible for financing.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.326

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988 (Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 15-1994, f. & cert. ef. 11-10-94; EDD 10-1996(Temp), f. & cert. ef. 12-4-96; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 14-2000(Temp), f. & cert. ef. 12-14-00 thru 6-12-01; Administrative correction 6-14-01; EDD 10-2001(Temp), f. & cert. ef. 12-13-01 thru 6-1-02; Administrative correction 11-29-02; EDD 4-2005, f. & cert. ef. 5-5-05; EDD 9-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 9-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08

Employment Department Chapter 471

Rule Caption: Customer Information and Disclosure (Confidentiality).

Adm. Order No.: ED 4-2008(Temp)

Filed with Sec. of State: 2-26-2008

Certified to be Effective: 2-26-08 thru 8-23-08

Notice Publication Date:

ADMINISTRATIVE RULES

Rules Adopted: 471-010-0080, 471-010-0085, 471-010-0090, 471-010-0100, 471-010-0105, 471-010-0110, 471-010-0115, 471-010-0120, 471-010-0125

Subject: The adopted rules (0080, 0085, 0090, 0095, 0100, 0105, 0110, 0115, 0120, 0125) represent the Employment Department's new confidentiality rules which reflect the new language of ORS 657.665 regarding customer information and disclosure. These rules outline the department's confidentiality process.

Rules Coordinator: Janet Orton—(503) 947-1724

471-010-0080

Definitions

(1) "Agent" means an individual or entity that is authorized to act for or in the place of another individual or entity.

(2) "Business" means any entity carrying on a trade or commercial enterprise that operates either inside or outside of Oregon and includes employers and employing units.

(3) "Customer" means any individual person seeking service from the Employment Department or other one-stop delivery system partner.

(4) "Employer" has the same meaning as in ORS 657.025

(5) "Employing Unit" has the same meaning as in ORS 657.020

(6) "Establishment" means an economic unit that produces goods or services, usually at a single physical location, and is engaged in one or predominantly one activity.

(7) "Governmental planning functions" means duties authorized by law which are undertaken by state, federal, or local government agencies, to facilitate policy decisions about the future. These functions include, but are not limited to, economic or similar modeling, impact analysis, projections, and forecasting.

(8) "Governmental performance measurement functions" means duties authorized by law which are undertaken by state, federal, or local government agencies regarding the success and impact of government programs.

(9) "Governmental program analysis functions" means duties authorized by law which are undertaken by state, federal, or local government agencies to better understand the impact and operation of government programs. These functions include, but are not limited to, fiscal analysis, budget analysis, and workload analysis.

(10) "Governmental socioeconomic functions" means duties authorized by law which are undertaken by state, federal, or local government agencies to better understand the socioeconomic conditions in which the governmental entity is operating. These functions include, but are not limited to, the analysis of demographic, labor force, employment, and income trends.

(11) "Governmental policy analysis functions" means duties authorized by law which are undertaken by state, federal, or local government agencies to determine or better understand the impact of policy choices and decisions. These functions include, but are not limited to, economic impact analysis, trend analysis, and economic or similar modeling.

(12) "Hosted Worker" means a non-Department employee or volunteer who, under the supervision of an Employment Department management service employee, performs services in the area of the public labor exchange, such as: selecting and referring job seekers on employer openings on jobs listed with the Employment Department, assisting employers in listing jobs, providing marketing or outreach services to the business community, assisting customers with their iMatch Skills registration, and assisting in the resource rooms. The roles and responsibilities of the Hosted Worker, the Workers' responsibilities with respect to confidential information, and the penalties for unauthorized disclosure must be addressed in a written agreement with the Hosted Worker's actual employer or the Worker if there is no employer.

(13) "Information" means

(a) Data that pertains to an individual business or person;

(b) Aggregations of data about businesses in which there are fewer than three businesses or in which any one business accounts for more than 80 percent of the aggregated data; and

(c) Aggregations of data about persons in which there are fewer than three persons.

(14) "Need to Know" means that access to, possession of, or other use of customer-related information is essential in order to carry out official duties.

(15) "One-stop delivery system" means the workforce development activities provided by one-stop delivery system partner entities as authorized by the Workforce Investment Act and HB 3835 (Chapter 684; Oregon Laws 2001) and described in local Memorandums of Understanding

(MOU) or Regional Partnership Agreements (RPA) developed by workforce investment boards and approved by the Governor's Office of Education & Workforce Policy.

(16) "One-stop delivery system partner" means entities authorized by the Workforce Investment Act and HB 3835 (Chapter 660; Oregon Laws 2001) and described in local Memorandums of Understanding (MOU) or Regional Partnership Agreements (RPA) developed by workforce investment boards and approved by the Governor's Office of Education & Workforce Policy. Entities may include private sector businesses that are a contracted agent of a governmental entity that is a one-stop delivery system agency or partner, and responsible for the delivery of Workforce Investment Act related services.

(17) "Public Official" means an official, agency, or public entity within the executive branch of Federal, State, or local government who, or which, has responsibility for administering or enforcing a law, or an elected official in the Federal, State, or local government.

(18) "Party" has the same meaning as in ORS 183.310(7).

(19) "Person" has the same meaning as in ORS 183.310(8).

(20) "Written disclosure agreement" means an interagency or other applicable agreement for sharing or disclosing information by written, electronic, paper, verbal or other means.

(21) "Workforce Investment Act" means the federal Workforce Investment Act of 1998 as codified in Public Law 105-220.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665

Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08

471-010-0085

Responsibility of Employment Department Staff

(1) Department staff must safeguard the confidentiality of information collected or obtained and disclose only information about the customer that is authorized by law or that is necessary to administer ORS Chapter 657 and Chapter 657A.

(2) Department staff and any other entities or individuals with access to Employment Department information are authorized to access confidential information only on a "need to know" basis, as needed to perform official duties.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665

Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08

471-010-0090

Disclosure Charges

The department may charge a reasonable fee to reimburse it for the cost of providing records, including the cost of preparing the information and costs associated with implementing and maintaining written disclosure agreements.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665

Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08

471-010-0100

Information Collection

(1) The department shall only collect and maintain customer information that is relevant and necessary to administer ORS Chapter 657 and Chapter 657A.

(2) In addition to the mandatory disclosure of social security numbers required under OAR 471-030-0025, the department may request that customers voluntarily provide their social security number to facilitate program administration, including research and statistical data or for such other purposes as are disclosed to the customer. The department shall not refuse to provide a benefit or service to any customer that refuses a voluntary request to provide his or her social security number.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665

Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08

471-010-0105

General Disclosures

(1) The department is authorized to disclose confidential information or records to non-governmental entities if the non-governmental entity enters into a written disclosure agreement with the department that:

(a) Requires the non-governmental entity to obtain a written release from the individual or business to whom the information pertains, containing the following:

(i) a statement specifically identifying the information that is to be disclosed;

(ii) notice that state government files will be accessed to obtain the information;

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(iii) a statement identifying the specific purposes for which the information is sought, which must be limited to providing a service or benefit to the individual or business signing the release or carrying out administration or evaluation of a public program;

(iv) a statement that information obtained under the release will only be used for that purpose or purposes; and

(v) a statement identifying all the parties who may receive the information;

(b) Requires the non-governmental entity to safeguard the information once in the hands of the non-governmental entity; and

(c) Requires the non-governmental entity to pay all costs associated with the disclosure.

(2) Unless otherwise authorized by these rules, the department is authorized to disclose confidential information or records to a customer or business only under the following provisions:

(a) The Oregon Employment Department staff is sure that the information was provided by the customer or business, or was previously provided to the customer or business; or

(b) For Oregon Employment Department wage records, the wage records are identified under the name, social security number or account number of the customer.

(3) The department is authorized to disclose confidential information or records to a third party or agent based on the informed consent of a customer or business if:

(a) The department receives a written release signed and dated by the customer or business that specifically states the information that may be disclosed and contains the information required by subsection (1)(a)(i)-(v) of this rule;

(b) The written release is witnessed or verified by a department staff person, or notarized; and

(c) The third party or agent presenting the request is the same party authorized to receive the information.

(d) The department will disclose only information that may be provided directly to the customer or business consenting to the disclosure.

(4) The department is authorized to disclose confidential information or records regarding a customer or business to the attorney for a customer or business pursuant to an informed consent from the customer or business that contains the information required in subsection (2) of this rule.

(a) If the attorney has been retained for purposes related to ORS Chapter 657 and the attorney asserts that he or she represents the customer or business, a written release that complies with subsection (2) of this rule is not required.

(b) The department will disclose only information that may be provided directly to the customer or business consenting to the disclosure.

(5) The department is authorized to disclose confidential information or records to a legislator or other elected official, or his or her staff, pursuant to an informed consent from a customer or business.

(a) A written release that complies with subsection (2) of this rule is not required if the department receives a copy of the letter written by the customer or business to the legislator or other elected official requesting the assistance of the elected official.

(b) If no letter is available, Oregon Employment Department staff will provide customer or business information only after receiving reasonable evidence from the legislator or other elected official, or his or her staff, that the customer or business authorized the disclosure.

(c) The department will disclose only information that may be provided directly to the customer or business consenting to the disclosure.

(6) Department staff must comply with Oregon child abuse reporting laws under ORS Chapter 419B.010, elderly abuse reporting laws under Chapter 124.060, and patient abuse reporting laws under 677.190.

(7) Drug or alcohol abuse information or records received from federally funded treatment programs, facilities or activities may not be used or redisclosed by the department without the written consent of the patient or a court order and subpoena that comply with the requirements in 42 USC § 290dd-2 and 42 CFR Part 2.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665

Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08

471-010-0110

Unemployment Insurance Disclosures

(1) The department is authorized to disclose confidential information or records necessary to prepare for a pending hearing to the extent necessary for the proper presentation of an Oregon Unemployment Insurance benefit claim at a hearing before an Administrative Law Judge, once a request for hearing has been filed.

(2) The department is authorized to disclose confidential information or records necessary to prepare for a review arising under a state or federal program administered by the department to a party or agent of a party.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665

Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08

471-010-0115

Business and Employment Services Disclosures

(1) The Department is authorized to disclose confidential customer information or records to one-stop delivery system partners if:

(a) A written disclosure agreement exists between the Employment Department and one-stop delivery system partner addressing confidentiality and authorized uses of the customer information;

(b) The request is based on the one-stop delivery system partner's "need to know" to perform official duties of their program;

(c) The customer whose information or records are being disclosed has provided informed consent authorizing that the information may be shared or disclosed; and

(d) Notice is provided that a consent, or authorization, is on file or secured electronically within the workforce system.

(2) The department is authorized to share business information with one-stop delivery system partners if:

(a) A written disclosure agreement exists between the Employment Department and one-stop delivery system partner addressing confidentiality and authorized uses of the employer information;

(b) The request is based on the one-stop delivery system partner's "need to know" to perform official duties of their program;

(c) The information does not include employer wage records or employer tax data; and

(d) The information is necessary for providing services to businesses. The information to be shared may include details such as who to contact, planned contact schedules, employer training needs, and results of contacts and telephone calls for coordinated service delivery to the business community.

(3) The department is authorized to disclose job listing information to customers, under the following circumstances:

(a) For "self-refer" job listings, the job will be listed with all needed information displayed directly for all interested job seekers, who may then contact the employer directly; or

(b) For "suppressed" job listings, the needed information is only provided to job seekers who are determined to be qualified for the job listing, and who are then given contact information by the Employment Department, authorized Hosted Workers, or one-stop delivery system partners with approved access to the information.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665

Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08

471-010-0120

Workforce and Economic Research Disclosures

(1) Department staff may share confidential information with public agencies for purposes of governmental planning, performance measurement, program analysis, socio-economic analysis, and policy analysis, if a written disclosure agreement is in place and if the requesting entity agrees to pay the costs of providing such information.

(2) Department staff may share confidential information with consultants and contractors working on specific projects for public agencies if those projects are for the purposes of governmental planning, performance measurement, program analysis, socio-economic analysis, and policy analysis; if a written disclosure agreement is in place between the Employment Department, the public agency, and the consultant or contracting firm; and if the requesting entity agrees to pay the costs of providing such information.

(3) Unless specifically noted elsewhere in ORS 657.665 or in this Rule, "governmental planning, performance measurement, program analysis, socioeconomic analysis and policy analysis functions" do not authorize the disclosure of confidential information:

(a) For purposes of mass mailings or marketing;

(b) That was collected by way of surveys conducted for statistical purposes, including those conducted in collaboration with the U.S. Bureau of Labor Statistics;

(c) For program eligibility or enforcement purposes; or

(d) Regarding individual persons, unless those persons have given their informed consent for such disclosure.

(4) Maps showing the location and characteristics of business establishments shall be limited by the following:

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(a) The name, address, specific location, and specific employment or payroll information about the business will not be displayed.

(b) The employment level of the business will be computed and reflected as follows:

(i) An annual average employment level for each establishment shall be the sum of each individual month's employment divided by 12.

(ii) This annual average employment level will be rounded to the nearest integer.

(iii) These rounded annual average employment levels will be reflected on a map using no greater detail than the following size class breakouts: 0, 1-4, 5-9, 10-19, 20-49, 50-99, 100-249, 250-499, and 500 or greater. Aggregations of these size classes are permitted.

(c) Businesses in the following industries will not be presented on maps:

(i) All businesses in NAICS 624221 — Temporary Shelters

(ii) All businesses in NAICS 814110 — Private Households

(5) For purposes of ORS 657.665(3)(a) and 657.665(4)(n), "local government" means cities, counties, and other political sub-divisions coded with an ownership code 3 in Employment Department records, with the exception of Indian tribal governmental agencies and other agencies specifically excluded based on other statutes or rules.

(6) Department staff may disclose the North American Industry Classification System (NAICS) code of any business and, by extension, may provide the NAICS definition of the industry of any business. Additionally, Department staff may provide lists of businesses in particular NAICS codes. However, these disclosures may only include the name and NAICS code or definition of the business; they may not include additional information such as address, contact information, or employment-related data.

(a) The NAICS codes of businesses in following industries will not be shared, nor will lists of these businesses be shared:

(i) All businesses in NAICS 624221 — Temporary Shelters.

(ii) All businesses in NAICS 814110 — Private Households.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665

Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08

471-010-0125

Audit Authority and Written Agreements With Entities Having Access to Employment Department Information

(1) All written agreements with entities other than "Hosted Workers" that have access to Employment Department information shall stipulate that, no less than once a year, the entity shall conduct an audit of the processes by which the entity implements the agreement(s). The audits shall include, but are not limited to:

(a) How access to Employment Department information is granted;

(b) How access to Employment Department information is controlled;

(c) Why access to Employment Department information is granted, based on OAR 471-010-0054(14);

(d) Who is authorized to grant & revoke access to Employment Department information;

(e) What specific programs within the entity need access to Employment Department information;

(f) Which specific positions within the programs referenced in OAR 471-010-0057(1)(e) need access to Employment Department information;

(g) What specific information within the Employment Department information is needed;

(h) Whether access to Employment Department information is granted to contractors, who the contractor is, and why the contractor is being given access; and

(i) What "informed consent" if any, the entity uses when gathering information from its customers.

(2) These audits shall subsequently be submitted to the Employment Department, who shall have final authority to decide compliance with the procedures in OAR 471-010-0057(1).

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665

Hist.: ED 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-23-08

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Employment Relations Board Chapter 115

Rule Caption: Amends rules for public employees to designate a collective bargaining representative without an election.

Adm. Order No.: ERB 1-2008

Filed with Sec. of State: 3-12-2008

Certified to be Effective: 3-17-08

Notice Publication Date: 2-1-2008

Rules Amended: 115-025-0025, 115-025-0030, 115-025-0065

Subject: The amendments concern the procedures for certification of a public employee collective bargaining representative without an election. Current rules permit employees to rescind their authorization cards after a petition is filed. Comments and written testimony received during the rulemaking process in November 2007 were persuasive that there should not be such a rescission period. The Board wants to allow further public input prior to making any changes. There is also an amendment to OAR 115-025-0025 to correct a typographical error.

Rules Coordinator: Leann G. Wilcox—(503) 378-8610

115-025-0025

Withdrawal or Dismissal of Petition

(1) Withdrawal of Petition. A petitioner may withdraw its petition with the approval of the Board or its agent. If a petition is withdrawn after the Recommended Order is issued, after a Consent Election Agreement is executed by the parties or after a representation election is requested under OAR 115-025-0070 in response to a petition seeking certification without an election, the withdrawal will be granted with prejudice and the petitioner may not submit a new petition for the bargaining unit for a period of six months from the date the withdrawal was approved.

(2) Dismissal of Petition. If the Board determines after an investigation that the petition has not been timely or properly filed, that no valid question concerning the representation of employees exists in an appropriate unit, or that the petition should not be processed for other reasons, it may request the party filing such a petition to withdraw the petition without prejudice or, in the absence of such withdrawal, it may dismiss the petition. Such action may be taken by the Board at any time prior to the closing of the case. A petitioner may, within 14 days of the date of service of the dismissal, request reconsideration of such action by the Board. This request shall contain a complete statement setting forth the facts and reasons upon which the request is based. On its own motion, the Board may or may not hear oral argument on a request for reconsideration. The Board may affirm the dismissal, or set the dismissal aside and remand the matter for hearing.

Stat. Auth.: ORS 243.766(7)

Stats. Implemented: ORS 243.682

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1991, f. 11-21-91, cert. ef. 12-1-91; ERB 2-2007(Temp), f. 7-20-07, cert. ef. 7-23-07 thru 1-15-08; ERB 4-2007, f. 12-17-07, cert. ef. 1-1-08; ERB 1-2008, f. 3-12-08, cert. ef. 3-17-08

115-025-0030

Posting Notice of Petition

(1) Upon receipt of a petition under OAR 115-025-0010(1), (2), (3) or (4), a Board Agent will cause a notice of the petition to be posted in the work areas granting maximum access to employees in the existing or proposed unit. Copies of the notice shall be served on the public employer and any known exclusive representative. The notice shall set forth:

(a) The name of the petitioning organization or employer.

(b) A description of the unit involved.

(c) A statement that parties and interested persons will have 14 days from the date of the notice to file:

(A) Objections to the appropriateness of the proposed unit;

(B) Objections to the positions to be included or excluded;

(C) Objections to the petitioner's designation of the issue(s) in cases filed under OAR 115-025-0005;

(D) Petition to intervene as provided in OAR 115-025-0035.

(d) Interested persons may notify the Board Agent of their specific objections. Such objections must also be served on the petitioner. Upon good cause shown, the Board Agent may call an interested person as a witness.

(2) Upon receipt of a petition for certification without an election under OAR 115-025-0010(5), a Board Agent will cause a notice of the petition to be posted in the work areas granting maximum access to employees in the proposed bargaining unit. Copies of the notice shall be served on the public employer. The notice shall set forth:

(a) A statement that certification without an election has been requested;

(b) The name of the labor organization which seeks certification;

(c) A description of the proposed bargaining unit;

(d) A statement that there are 14 days from the date of the notice to file:

(A) Objections to the appropriateness of the unit;

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(B) Objections that a labor organization is currently certified or recognized as the exclusive representative of one or more employees in the proposed unit;

(C) Objections to the positions to be included or excluded; or

(D) A request for an election pursuant to ORS 243.682(3).

(e) Interested persons may notify the Board Agent of their specific objections. Such objections must also be served on the petitioner. Upon good cause shown, the Board Agent may call an interested person as a witness.

Stat. Auth.: ORS 243.766(7)

Stats. Implemented: ORS 243.682 & 243.686

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 6-1985, f. 10-29-85, ef. 10-31-85; ERB 1-1988, f. & cert. ef. 4-25-88; ERB 1-1991, f. 11-21-91, cert. ef. 12-1-91; ERB 2-2007(Temp), f. 7-20-07, cert. ef. 7-23-07 thru 1-15-08; ERB 4-2007, f. 12-17-07, cert. ef. 1-1-08; ERB 1-2008, f. 3-12-08, cert. ef. 3-17-08

115-025-0065

Certification Without Election

(1) Upon receipt of a petition under OAR 115-025-0010(5) for certification without an election, a Board Agent shall commence an investigation and shall cause a notice of the petition to be posted as described in OAR 115-025-0030(2).

(2) Authorization Cards.

(a) An authorization card submitted in support of a petition for certification without an election must, at a minimum, contain the following:

(A) The employee's name typed or legibly printed;

(B) The employee's signature;

(C) The date of the employee's signature;

(D) A statement that the employee designates the named labor organization as the employee's exclusive representative for purposes of collective bargaining with the employee's employer; and

(E) A statement that the employee understands that the employee's signature on the card may be used to obtain certification of the named labor organization as the exclusive bargaining representative without an election.

(b) An employee authorization card must be signed and dated within the 90-day period before the petition was filed.

(c) Authorization cards shall be submitted in alphabetical order.

(d) An employee authorization card that does not comply with this subsection shall be deemed invalid.

(3) Eligible Employees. For the purpose of determining the adequacy of the authorization cards, public employees who were employed on the filing date of the petition for certification without an election are included in the proposed bargaining unit and are considered eligible in the processing of the petition. The Board may also include as eligible other employees who have a reasonable expectation of continuing employment, including but not limited to seasonal employees or employees on layoff.

(4) List of Eligible Employees. Within 7 days after a public employer receives notice under OAR 115-025-0030(2) that a petition has been filed seeking certification without an election, it will submit to the Board an alphabetical list of employees in the proposed bargaining unit, including their names, addresses and job classifications. The Board will provide a copy of the list to the labor organization named in the petition.

(5) Challenges to the List of Eligible Employees.

(a) Challenges to the inclusion of a name on or exclusion of a name from the list of eligible employees must be filed with the Board within 7 days after the Board provides the labor organization a copy of the list under subsection (5) of this section.

(b) The Board Agent shall determine whether a majority of employees on the list supplied by the employer has signed valid authorization cards. The Board Agent shall then determine whether there is a sufficient number of challenged names to affect the result.

(A) If the number of challenges is insufficient to potentially affect the result, then the challenges shall be dismissed.

(B) If the number of challenges is sufficient to potentially affect the result, the Board Agent shall investigate and, when appropriate, issue a notice of hearing on the challenges. The hearing will be conducted as set forth in OAR 115-025-0045. The challenging party shall bear the burden of proof.

(6) Authentication. The Board shall determine whether each otherwise valid authorization card was signed by an eligible employee;

(7) Objections. Objections to a petition for certification without an election must be filed within 14 days of the date of the notice posted pursuant to OAR 115-025-0030(2). Hearings on such objections shall be conducted under OAR 115-025-0045.

(8) Certification. If it is determined that a majority of an appropriate unit has signed valid authorization cards designating the labor organization named in the petition as the exclusive representative, and that no other labor

organization is currently certified or recognized as the exclusive representative for any employee in the proposed bargaining unit, then the Board shall certify the labor organization named in the petition as the exclusive representative without an election unless a timely petition for election is filed under OAR 115-025-0075.

Stat. Auth.: ORS 243.766(7)

Stats. Implemented: ORS 243.682

Hist.: ERB 2-2007(Temp), f. 7-20-07, cert. ef. 7-23-07 thru 1-15-08; ERB 4-2007, f. 12-17-07, cert. ef. 1-1-08; ERB 1-2008, f. 3-12-08, cert. ef. 3-17-08

Land Conservation and Development Department Chapter 660

Rule Caption: Adoption and Amendment of Temporary Rules Implementing 2007 Ballot Measure 49.

Adm. Order No.: LCDD 2-2008(Temp)

Filed with Sec. of State: 2-21-2008

Certified to be Effective: 2-21-08 thru 6-10-08

Notice Publication Date:

Rules Adopted: 660-041-0060, 660-041-0070, 660-041-0080, 660-041-0090, 660-041-0100, 660-041-0500, 660-041-0510, 660-041-0520, 660-041-0530

Rules Amended: 660-002-0010, 660-002-0015, 660-041-0000, 660-041-0010, 660-041-0020, 660-041-0030, 660-041-0040

Rules Suspended: 660-041-0050

Subject: These temporary rules specify what a person submitting a Measure 49 claim must include as part of their claim. These rules also address the effect of 2007 Ballot Measure 49 on waivers that have already been approved by DLCD under 2004 Ballot Measure 37, including the effect for purposes of the state agency coordination requirements under ORS 197.180. In addition, these rules amend the LCDC delegation of authority to the Director of DLCD to conform to 2007 Ballot Measure 49. Finally, these rules establish a process for supplemental review of Measure 37 claims under 2007 Ballot Measure 49.

Rules Coordinator: Sarah Watson—(503) 373-0050, ext. 271

660-002-0010

Authority to Director

In addition to the other duties and responsibilities conferred on the Director by ORS Chapter 197, the Director shall exercise and hereinafter be vested with authority to:

(1) Assent to a modification of a planning extension or a compliance schedule of a city or county in accordance with ORS 197.251(2);

(2) Condition a compliance schedule in accordance with ORS 197.252;

(3) Approve a planning assistance grant agreement with a city or county, including modifications thereto; and

(4) Request that the Commission schedule a hearing to consider an enforcement order if the Director has good cause to believe that any of the conditions exist as set forth in ORS 197.320(1) through (10);

(5) Execute any written order, on behalf of the Commission, which has been consented to in writing by the parties adversely affected thereby;

(6) Prepare and execute written orders, on behalf of the Commission, implementing any action taken by the Commission on any matter;

(7) Establish procedures by which the Director shall periodically review and report to the Commission the status of comprehensive plans within each city and county;

(8) Carry out the responsibilities and exercise the authorities of the Commission and DLCD in responding to claims under ORS 197.352 (2004 Ballot Measure 37) and Chapter 424, Oregon Laws 2007 (2007 Ballot Measure 49), including:

(a) Review of claims made under ORS 197.352 and Chapter 424, Oregon Laws 2007;

(b) Denial of claims under ORS 197.352 and Chapter 424, Oregon Laws 2007; and

(c) Approval of claims under ORS 197.352 and Chapter 424, Oregon Laws 2007, except that the Director may approve a claim only by not applying the land use regulations that are the basis of the claim unless legislation is enacted that appropriates funds for the payment of claims under ORS 197.352 or Chapter 424, Oregon Laws 2007.

Stat. Auth.: ORS 183, 196 & 197, Ch. 424, OL 2007

Stats. Implemented: ORS 197.040, 197.045 & 197.090, Ch. 424, OL 2007

Hist.: LCD 4-1978, f. & ef. 3-24-78; LCD 3-1979, f. & ef. 3-27-79; LCDC 7-1980(Temp), f. & ef. 12-17-80; LCD 1-1981, f. & ef. 2-23-81; LCD 4-1981, f. & ef. 4-3-81; LCDC 2-

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1983(Temp), f. & cert. ef. 2-9-83; LCDC 3-1983, f. & cert. ef. 5-5-83; LCDC 5-1988, f. & cert. ef. 9-29-88; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2005(Temp), f. & cert. ef. 3-18-05 thru 9-13-05; LCDD 5-2005, f. & cert. ef. 8-12-05; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

660-002-0015

Notice of Director's Actions

(1) The Director shall establish procedures which shall be reasonably calculated to provide notice to interested member of the public and other units of government of the Director's actions taken pursuant to OAR 660-002-0010.

(2) The Director shall provide the Commission with a monthly report summarizing actions taken by the Director during the preceding month pursuant to this rule and any written public comments received by the Department which pertain to those actions.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.040, 197.045 & 197.090

Hist.: LCD 4-1978, f. & cert. ef. 3-24-78; LCDC 5-1988, f. & cert. ef. 9-29-88; LCDD 2-2005(Temp), f. & cert. ef. 3-18-05 thru 9-13-05; LCDD 5-2005, f. & cert. ef. 8-12-05; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

660-041-0000

Purpose and Applicability

(1) The purpose of OAR 660-041-0000 to 660-041-0100 is to implement Chapter 424, Oregon Laws 2007 (2007 Oregon Ballot Measure 49) by establishing procedures for Supplemental Review of Measure 37 Claims. These rules also contain requirements for notice of applications and decisions regarding Measure 37 Permits, and clarify when a DLCD Measure 37 Waiver is required. Finally, these rules also explain the effect of Measure 49 on DLCD Measure 37 Waivers.

(2) OAR 660-041-0010 applies to all Claims, Measure 37 Permits and DLCD Measure 37 Waivers that are subject to OAR 660-041-0020 to 660-041-01060.

(3) OAR 660-041-0020 applies only to Claims that were received by DAS after December 4, 2006 and on or before June 28, 2007, and that are based on one or more DLCD Regulations.

(4) OAR 660-041-0030 applies to applications for and decisions on a Measure 37 Permit filed or made on or after February 20, 2007.

(5) OAR 660-041-0040 to 660-041-0060 apply to all DLCD Measure 37 Waivers.

(6) OAR 660-041-0070 to 660-041-0100 apply to the Supplemental Review of a Claim by DLCD.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007

Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007

Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef. 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

660-041-0010

Definitions

The following definitions apply to OAR 660-041-0000 to 660-041-0100:

(1) "Agency" has the meaning provided by ORS 183.310.

(2) "Claim" means a written demand for compensation under ORS 197.352 (2005) that was filed on or before June 28, 2007.

(3) "Claimant" means a person who submitted a Claim.

(4) "DAS" means the Department of Administrative Services.

(5) "DLCD" means the Department of Land Conservation and Development.

(6) "DLCD Measure 37 Waiver" means a decision by the Land Conservation and Development Commission (LCDC) or DLCD that was made before December 6, 2007 under ORS 197.352 (2005) to modify, remove or not apply one or more DLCD Regulations to allow a Claimant to use the Property for a use that was permitted when the Claimant acquired the Property.

(7) "DLCD Regulation" means a Land Use Regulation that is also a state statute codified in ORS chapter 92, 195, 197, 215 or 227, a Statewide Planning Goal, or an LCDC rule. An "Existing DLCD Regulation" means a DLCD Regulation that was enacted by the State of Oregon or adopted by LCDC with an effective date prior to December 2, 2004. A "New DLCD Regulation" means a DLCD Regulation that was enacted by the State of Oregon or adopted by LCDC with an effective date of on or after December 2, 2004.

(8) "Elected" means filed the form provided by DLCD as required by section 8 of Chapter 424, Oregon Laws 2007.

(9) "Land Use Application" means an application for a "land use decision," a "limited land use decision," or an "expedited land division," as

those terms are defined by ORS 197.015 and 197.360, or an application for a permit or zone change under ORS 227.160 to 227.187 or under 215.402 to 215.437.

(10) "Land Use Regulation" has the meaning provided by ORS 197.352(11) (2005).

(11) "LCDC" means the Land Conservation and Development Commission.

(12) "Measure 37 Permit" means a final decision by a city, a county, or by Metro to authorize the development, division or other use of Property pursuant to a Measure 37 Waiver. A Measure 37 Permit may be a land use decision, a limited land use decision, an expedited land use decision, a permit (as that term is defined in ORS 215.402 and 227.160), a zone change, or a comprehensive plan amendment. A Measure 37 Permit also includes a final decision by a city, a county, or by Metro that a person has a vested right to complete or continue a use based on a Measure 37 Waiver.

(13) "Measure 37 Waiver" means a decision by a city, a county, Metro or the State of Oregon that was made before December 6, 2007 under ORS 197.352 (2005) to modify, remove or not apply one or more Land Use Regulations to allow a Claimant to use the Property for a use that was permitted when the Claimant acquired the Property.

(14) "Metro" means the Portland Metropolitan Service District.

(15) "Property" has the meaning provided by section 2(17) of Chapter 424, Oregon Laws 2007.

(16) "Supplemental Information" means information needed by DLCD, under section 8(3) of Chapter 424, Oregon Laws 2007, to proceed with the Supplemental Review of a Claim.

(17) "Supplemental Review" means review by DLCD of a Claim under either section 6 or section 7 of Chapter 424, Oregon Laws 2007.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007

Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007

Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef. 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

660-041-0020

Contents of a Measure 37 Claim Based on a DLCD Regulation

(1) When a Claim is based on one or more Existing DLCD Regulations, then the Claim must:

(a) Be received by DAS within two years of the date a city, county, Metro, or an Agency applied one or more Existing DLCD Regulations, or applied city, county or Metro land use regulations that implement Existing DLCD Regulations, as approval criteria to an application submitted by the Claimant; and

(b) Include one of the following:

(A) A copy of the final written decision by a city, a county, or Metro on a Land Use Application that includes the Property and that requests authorization for the specific use that the Claim is based on, in which the city, county, or Metro determined that one or more Existing DLCD Regulations or city, county or Metro Land Use Regulations that implement Existing DLCD Regulations were approval criteria for the decision; or

(B) A copy of the final written action by an Agency on a complete application to the Agency, in which the Agency determined that one or more Existing DLCD Regulations were approval criteria for the application.

(2) When a Claim is based on one or more New DLCD Regulations, then the Claim must:

(a) Be received by DAS within two years of:

(A) The effective date of the New DLCD Regulations; or

(B) Within two years of the date the Claimant submitted a Land Use Application in which the Land Use Regulations were approval criteria, whichever is later; and

(b) If the Claim is submitted more than two years after the effective date of the New DLCD Regulations, the Claim must include a copy of the final written decision by a city, a county, or Metro on a Land Use Application that includes the Property and that requests authorization for the specific use that the Claim is based on, in which the city, county, or Metro determined that the New DLCD Regulations or city or county or Metro Land Use Regulations that implement the New DLCD Regulations were approval criteria for the decision.

(3) When a Claim is based on both Existing and New DLCD Regulations, the requirements of section (1) of this rule must be met with respect to the Existing DLCD Regulations, and the requirements of section (2) of this rule must be met with respect to the New DLCD Regulations.

(4) A DLCD Regulation is applied as an approval criterion for purposes of this rule and ORS 197.352(5) when a city, county or Metro makes a final written decision on a Land Use Application, or when an Agency takes final written action on an application to that Agency, and that final

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written decision or final written action denies the application or conditions the approval of the application on the basis (in whole or in part) of the DLCD Regulation.

(5) This rule applies only to Claims that were received by DAS after December 4, 2006, and that are based on one or more DLCD Regulations.

Stat. Auth.: ORS 197.040 & 197.065
Stats. Implemented: ORS 197.015, 197.040, 197.065 & 197.352
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef. 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

660-041-0030

Notice of Applications and Decisions

(1) Except for a building permit that is not a "land use decision" under ORS 197.015(11)(b)(B), cities, counties and Metro must provide written notice to DLCD of all applications for a Measure 37 Permit, and all final written decisions on a Measure 37 Permit, filed with or made by the city, county or Metro after February 20, 2007.

(2) Notice of an application for a Measure 37 Permit required under section (1) of this rule must be mailed to DLCD's Salem office at least ten calendar days before any deadline for comment on the application for a Measure 37 Permit. If there is no opportunity for comment, then the notice must be sent ten days before the decision becomes final. The notice must include:

(a) A copy of the applicable Measure 37 Waiver issued by the city, county, or by Metro;

(b) A copy of any notice provided under ORS 197.195, 197.365, 197.615, 197.763, 227.175 or 215.416;

(c) The claim number of the Measure 37 Waiver issued by the State of Oregon (if any);

(d) The terms of the State's Measure 37 Waiver as applicable criteria in the subject land use application; and,

(e) The name of the present owner of the property.

(3) Notice of a final decision on a Measure 37 Permit required under section (1) of this rule must be mailed to DLCD's Salem office within ten calendar days of the date of the final written decision. The notice must include a copy of the final written decision.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef. 12-4-06 thru 6-2-07; LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

660-041-0040

When a DLCD Measure 37 Waiver is Required

Before a Claimant may use Property for a use under a Measure 37 Waiver, the Claimant must obtain a DLCD Measure 37 Waiver for that use of the Property in all cases where that use is restricted by a DLCD Regulation or by a city, county or Metro Land Use Regulation that implements a DLCD Regulation. These cases include, but are not limited to, all cases where the use is a use of land, and the Property includes:

(1) Land zoned for farm use under Goal 3;

(2) Land zoned for forest use under Goal 4; or

(3) Land outside of an acknowledged urban growth boundary where the Claimant's desired use of the Property is an urban use under Goal 14, or that use includes the establishment or extension of a sewer or water system restricted under Goal 11.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

660-041-0050

Applicability

OR 660-041-0020 applies only to Claims that were received by DAS after December 4, 2006, and that are based on one or more DLCD Regulations. OAR 660-041-0030 applies to applications for and decisions on a Measure 37 Permit filed or made on or after February 20, 2007. OAR 660-041-0040 takes effect upon the filing of these rules with the Oregon Secretary of State.

Stat. Auth.: ORS 197.040 & 197.065
Stats. Implemented: ORS 197.015, 197.040, 197.065 & 197.352
Hist.: LCDD 1-2007, f. 2-5-07, cert. ef. 2-9-07; Suspended by LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; Suspended by LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

660-041-0060

Effect of 2007 Ballot Measure 49 on DLCD Measure 37 Waivers

Any authorization for a Claimant to use Property without application of a DLCD Regulation provided by a DLCD Measure 37 Waiver expired on December 6, 2007, as did the effect of any order of DLCD denying a

Claim. A Claimant may continue an existing use of Property that was authorized under ORS 197.352 (2005), or complete a use of Property that was begun prior to December 6, 2007 (2005) only if the Claimant had a common law vested right to complete and continue that use on December 6, 2007, and the use complies with the terms of any applicable DLCD Measure 37 Waiver.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

660-041-0070

State Agency and Special District Land Use Coordination and DLCD Measure 37 Waivers

After December 5, 2007, when a state agency or a special district is required to take an action in a manner that complies with the Statewide Planning Goals and that is compatible with comprehensive plans and land use regulations under ORS 197.180 (for a state agency), or under ORS 195.020 (for a special district), the state agency or special district must not take that action if it involves a use of Property based on a Measure 37 Waiver. After December 5, 2007, any authorization to not apply a Land Use Regulation based on a DLCD Measure 37 Waiver has expired, and a DLCD Measure 37 Waiver may not serve as the basis for a finding required under ORS 197.180 or 195.020.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

660-041-0080

Supplemental Information for Supplemental Review of Measure 37 Claims under Measure 49

(1) DLCD may request Supplemental Information from a Claimant or the Claimant's authorized agent if the record for the Claim does not include all the information needed for DLCD to proceed with the Supplemental Review of the Claim.

(2) Supplemental Information requested by DLCD must be filed with DLCD within fifty-six (56) days of the date the request is sent and must be filed in the manner described in OAR 660-041-0100.

(3) For good cause shown, DLCD may extend the period for filing Supplemental Information beyond fifty-six (56) days.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

660-041-0090

Notice and Comment for Supplemental Review of Measure 37 Claims under Measure 49

(1) DLCD will mail written notice of a Supplemental Review to the Claimant or the Claimant's authorized agent, to the local government with land use jurisdiction over the Property, to any person who is an owner of record of real property located within 250 feet of the Property if the Property is not within a farm or forest zone or within 750 feet of the Property if the Property is located in a farm or forest zone, and to any neighborhood or community organization(s) whose boundaries include the Property if the county in which the Property is located provides DLCD the name and address of the organization(s).

(2) To be considered by DLCD in its Supplemental Review of a Claim, comments, evidence or information concerning that Claim by a third party or local government must be filed as provided in OAR 660-041-0100 with DLCD within twenty-eight (28) days of the date the notice under subsection (1) of this rule is mailed.

(3) DLCD will mail copies of the comments, evidence or information concerning the Claim to the Claimant.

(4) The Claimant or Claimant's authorized agent may file a written response to any comments, evidence or information filed by a third party. To be considered by DLCD, the response must be filed as provided in OAR 660-041-0100 with DLCD within twenty-one (21) days after the date DLCD mailed the comments, evidence or information to the Claimant as provided for under subsection (3) of this rule.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

660-041-0100

Submissions to DLCD Regarding Supplemental Review of a Measure 37 Claim under Measure 49

(1) A Claimant may file the form electing how the Claimant wishes to proceed under sections 5 to 11 of Chapter 424, Oregon Laws 2007 (2007

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Oregon Ballot Measure 49) only after receiving the notice and form from DLCD.

(2) All information filed with DLCD regarding the Supplemental

Review of a Claim must be filed at:

Supplemental Measure 49 Claim Review
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540

(3) Submissions regarding a Supplemental Review shall not be submitted by facsimile or electronically.

(4) The date information is filed is the date the information is received by DLCD, or the date it is mailed, provided it is mailed by registered or certified mail and the person filing the information has proof from the post office of such mailing date. If the date of mailing is relied upon as the date of filing, acceptable proof from the post office shall consist of a receipt stamped by the United States Postal Service showing the date mailed and the certified or registered number.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

660-041-0500

Purpose and Applicability

The purpose of OAR 660-041-0500 to 660-041-0530 is to clarify and implement Chapter 424, Oregon Laws 2007 (2007 Oregon Ballot Measure 49) in terms of the requirements and procedures for filing and reviewing Measure 49 Claims. These rules apply to Measure 49 Claims filed with the State of Oregon.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

660-041-0510

Definitions

The following definitions apply to OAR 660-041-0500 to 660-041-0530:

(1) "Agency" has the meaning provided by ORS 183.310.

(2) "Claimant" means an Owner who filed a Measure 49 Claim.

(3) "DLCD" means the Department of Land Conservation and Development.

(4) "DLCD Regulation" has the meaning provided by section 2(14)(a)-(b) and 2(14)(g) of Chapter 424, Oregon Laws 2007.

(5) "Farming Practice" has the meaning provided by section 2(5) of Chapter 424, Oregon Laws 2007.

(6) "File" or "Filed" has the meaning provided by section 2(7) of Chapter 424, Oregon Laws 2007. The date a document is Filed is the date that it is received by the Public Entity.

(7) "Forest Practice" has the meaning provided by section 2(8) of Chapter 424, Oregon Laws 2007.

(8) "Land Use Regulation" has the meaning provided in section 2(14) of Chapter 424, Oregon Laws 2007. A "New Land Use Regulation" means a Land Use Regulation that was enacted by the State of Oregon or adopted by an Agency on or after January 1, 2007.

(9) "Lot" means a single unit of land that is created by a subdivision of land as defined in ORS 92.010.

(10) "Measure 49 Claim" means a claim Filed with the State of Oregon under ORS 197.352 (2005) that was Filed between June 29, 2007 and December 5, 2007, and a claim Filed with the State of Oregon under Chapter 424, Oregon Laws 2007 after December 5, 2007.

(11) "Owner" has the meaning provided by section 2(17) of Chapter 424, Oregon Laws 2007.

(12) "Parcel" means a single unit of land that is created by a partitioning of land as defined in ORS 92.010 and 215.010.

(13) "Property" has the meaning provided by section 2(17) of Chapter 424, Oregon Laws 2007.

(14) "Regulating Entity" means an Agency that has enacted, or has authority to remove, modify or not to apply, the Land Use Regulation(s) identified in the Measure 49 Claim.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

660-041-0520

Procedures for Measure 49 Claims

(1) A Measure 49 Claim must be Filed by the Owner of the Property or an authorized agent of the Owner. A Measure 49 Claim must be Filed on a claim form available from DLCD at the address provided in this rule, or

from DLCD's website, and must contain all information required by the form.

(2) A Measure 49 Claim must be Filed with DLCD at:

Measure 49 Claims
635 Capitol St. NE, Suite 150
Salem 97301-2540

Claims may not be submitted by facsimile or electronically.

(3) If the Measure 37 Claim was Filed after June 28, 2007, but before December 6, 2007, it is deemed Filed on December 6, 2007 for purposes of subsections 13(5) to 13(11) of Chapter 424, Oregon Laws 2007.

(4) DLCD's form for a Measure 49 Claim will require at least the following information:

(a) The name and mailing address of each Claimant and each Owner of the Property.

(b) Evidence establishing that each Claimant is an Owner of the Property.

(c) The consent to the Measure 49 Claim by each Owner of the Property if there are Owners of the Property other than the Claimant, which consent must be notarized.

(d) A description of the Claimant's specific desired use of the Property, which use must be a residential use or a Farming Practice or a Forest Practice. The description must be sufficiently specific to establish that each Land Use Regulation listed under paragraph (g) of this rule applies to and restricts the Claimant's desired use.

(e) The location of the Property by reference to:

(A) The township, range, section and tax lot number for each Lot or Parcel that makes up the Property;

(B) The street address of each Lot or Parcel that makes up the Property, if a street address has been assigned;

(C) The county the Property is located in; and

(D) If the Property is located within a city, the name of that city.

(f) Evidence of each Claimant's Acquisition Date, as provided in sections 13(7)(c) and 21 of Chapter 424, Oregon Laws 2007;

(g) A listing of each specific New Land Use Regulation that is alleged to restrict the Claimant's desired use of the Property, and for each New Land Use Regulation listed, a description of how that regulation restricts the Claimant's desired use of the property;

(h) An appraisal of the reduction in the fair market value of the Property caused by the enactment of each listed New Land Use Regulation as provided in section 12(2) of Chapter 424, Oregon Laws 2007.

(5) DLCD will review a Measure 49 Claim to determine whether it complies with the requirements of sections 12 to 14 of Chapter 424, Oregon Laws 2007. If the Measure 49 Claim is incomplete, within 60 days of receiving the claim, DLCD will notify the person who filed the claim of the information that is missing. The notification will be in writing. A Measure 49 Claim is complete when DLCD receives:

(a) The missing information;

(b) Part of the missing information and written notice from the Claimant that the remainder of the missing information will not be provided; or

(c) Written notice from the claimant that none of the missing information will be provided.

(6) If a Claimant submits a request in writing for additional time to provide missing information, DLCD may for good cause shown agree to provide such additional time, which agreement must be in writing. An agreement to allow additional time has the effect of abating the time requirements under sections 13 and 14 of Chapter 424, Oregon Laws 2007, until the date specified in the agreement.

(7) If DLCD does not notify the Claimant within 60 days after a Measure 49 Claim is Filed that information is missing from the claim, the claim is deemed complete when Filed.

(8) If the Claimant does not respond in writing to the written notification from DLCD under subsection (5) of this rule within sixty (60) days of the date the written notification was sent, the claim is deemed withdrawn.

(9) DLCD will provide notice of a Measure 49 Claim as provided by section 14 of Chapter 424, Oregon Laws 2007. The notice will describe the Measure 49 Claim and specify a deadline by which written evidence and arguments must be Filed. The Claimant may respond to the written evidence and argument by Filing a written response within fifteen (15) days of the date specified as the deadline for the initial evidence and argument.

(10) DLCD will mail a copy of its final determination to the Claimant and to any person who timely filed written evidence or arguments.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007
Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007
Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

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660-041-0530

Coordinating with Other Regulating Entities

(1) If the Measure 49 Claim is based, in whole or in part, on a New Land Use Regulation that was enacted by an Agency other than DLCD, or the New Land Use Regulation is a state statute that is administered by an Agency other than DLCD, DLCD will forward the claim to that Agency.

(2) When a Measure 49 Claim is based, in whole or in part, on a New Land Use Regulation for which there is no Regulating Entity, DLCD will forward the claim to the Department of Administrative Services.

(3) When a Regulating Entity other than DLCD is wholly responsible for a Measure 49 Claim, that Regulating Entity will process the claim using the procedures set forth in OAR 660-041-0520 unless that Regulating Entity has adopted its own procedures for review.

(4) When a Regulating Entity other than DLCD is partially responsible for a Measure 49 Claim, DLCD will coordinate the review of the claim under the procedures set forth in OAR 660-041-0520. However, the other Regulating Entity will decide whether the Claimant is entitled to relief with respect to the New Land Use Regulations that it enacted or that it administers as provided in Chapter 424, Oregon Laws 2007 and if so what form of relief to grant under subsection 12(5) with respect to those regulations.

(5) DLCD will issue the final order itself or jointly with one or more other Regulating Entities.

Stat. Auth.: ORS 197.040 & 197.065, Ch. 424, OL 2007

Stats. Implemented: ORS 197.015, 197.040, 197.065, 197.352, Ch. 424, OL 2007

Hist.: LCDD 2-2007(Temp), f. & cert. ef. 12-10-07 thru 6-7-08; LCDD 2-2008(Temp), f. & cert. ef. 2-21-08 thru 6-10-08

Landscape Contractors Board Chapter 808

Rule Caption: Repeals delegated authority for an Administrative Law Judge to issue a final order on behalf of the LCB.

Adm. Order No.: LCB 2-2008

Filed with Sec. of State: 3-7-2008

Certified to be Effective: 3-7-2008

Notice Publication Date: 2-1-2008

Rules Repealed: 808-009-0360

Subject: The rule is being repealed to withdraw the delegated authority for an Administrative Law Judge to issue a final order on behalf of the LCB.

Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909

Oregon Department of Education Chapter 581

Rule Caption: Deletes specific references to Program Budget and Accounting Manual edition used by school districts.

Adm. Order No.: ODE 5-2008

Filed with Sec. of State: 2-22-2008

Certified to be Effective: 2-22-08

Notice Publication Date: 12-1-2007

Rules Amended: 581-023-0035, 581-023-0041

Subject: Amendment deletes references to 2006 edition of program budget and Accounting Manual published by Oregon Department of Education.

Rules Coordinator: Paula Merritt—(503) 947-5746

581-023-0035

Budgeting and Accounting for Schools

Rules governing the budgeting and accounting systems for schools and the school systems of accounts are contained in Chapter 2 of the **Program Budgeting and Accounting Manual**, published by the Oregon Department of Education. The State Board of Education adopts this publication to govern budgeting and accounting systems for schools.

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

Stat. Auth.: ORS 326.051 & 327.125

Stats. Implemented: ORS 294.356 & 327.125

Hist.: 1EB 163, f. 2-20-74, ef. 3-15-74; 1EB 234, f. & ef. 6-18-76; 1EB 23-1980(Temp), f. & ef. 9-2-80; 1EB 27-1980, f. & ef. 11-7-80; EB 12-1987, f. & ef. 7-10-87; ODE 5-1999, f. & cert. ef. 1-12-99; ODE 5-2001, f. & cert. ef. 1-29-01; ODE 3-2003, f. & cert. ef. 3-10-03; ODE 2-2007, f. & cert. ef. 1-26-07; ODE 5-2008, f. & cert. ef. 2-22-08

581-023-0041

Computation of Net Operating Expenditures

(1) The computation of "net operating expenditures" under ORS 327.006 shall be made as follows, using accounts as herein defined for the

General Fund and subject to such items of exclusion as are stated in this rule.

(a) Instruction (K-12, regular school year):

(A) Regular Programs (function 1100 except functions 1113, 1122, 1132, and 1140) — \$____;

(B) Special Programs (function 1200) — \$____;

(C) *Total Approved Instruction* ((a)(A) + (B)). — \$____(a).

(b) Supporting Services:

(A) Students (function 2100) — \$____;

(B) Instructional Staff (function 2200) — \$____;

(C) General Administration (function 2300) — \$____;

(D) School Administration (function 2400) — \$____;

(E) Business (functions 2510, 2520, 2540, and 2570); \$____;

(F) Central (function 2600) — \$____;

(G) *Total Approved Supporting Services* ((b)(A) + (B) + (C) + (D) + (E) + (F)) — \$____(b).

(c) Subtotal ((a) + (b)) — \$____(c);

(d) Tuition and Services Receipts (revenue code 1310 + revenue code 1940) — \$____(d);

(e) Approved Net Operating Expenditures for Resident Pupils (c) minus (e) (d) — \$____(e).

(2) The following expenditure items are excluded from the computation:

(a) Co-curricular expenditures, instruction functions only;

(b) All capital outlay expenditures;

(c) **Workforce Investment Act** or ESEA funded expenditures;

(d) Expenditures for programs operated under 343.261; and 343.961.

(e) Expenditures for programs operated under 343.455; and 343.534.

(f) Indian Education funded expenditures.

(3) Approved expenditures by function/object used in the computation shall be restricted to the General Fund:

(4) Approved function and object codes used in the computation are defined in the **Program Budgeting and Accounting Manual**, published by the Oregon Department of Education.

(5) Questions regarding approvable items in the administration of this rule shall be resolved by the State Superintendent of Public Instruction and the Superintendent's determination shall be final.

(6) The provisions of this administrative rule shall apply to all statutory references to "net operating expenditures". Any change made in the accounting system by the State Board of Education shall be reflected by corresponding adjustments in functions and object codes stated in the rule.

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

Stat. Auth.: ORS 327.125

Stats. Implemented: ORS 327.006(6) & 327.008

Hist.: 1EB 16-1979, f. 11-8-79, ef. 11-9-79; 1EB 22-1980, f. & ef. 7-15-80; 1EB 14-1985, f. 7-3-85, ef. 7-5-85; EB 22-1987, f. 10-16-87, ef. 7-1-88; ODE 23-2001, f. & cert. ef. 11-7-01; ODE 5-2008, f. & cert. ef. 2-22-08

Rule Caption: Content of repealed rules is included in newly adopted rules and repeal will delete duplication.

Adm. Order No.: ODE 6-2008

Filed with Sec. of State: 2-22-2008

Certified to be Effective: 2-22-08

Notice Publication Date: 7-1-2007

Rules Repealed: 581-015-0055, 581-015-0065

Subject: The content of the rules proposed for repeal was included in other recently adopted rules. The repeal will remove the duplicates.

Rules Coordinator: Paula Merritt—(503) 947-5746

Rule Caption: Allows Head Start and prekindergarten programs to qualify for discounts under E-rate program.

Adm. Order No.: ODE 7-2008(Temp)

Filed with Sec. of State: 2-22-2008

Certified to be Effective: 2-22-08 thru 8-20-08

Notice Publication Date:

Rules Adopted: 581-019-0033

Subject: The Universal Service Administrative Company, the company that administers the E-rate program for the Federal Communications Commission, has sent a letter to the Superintendent of the Public Instruction to confirm that federal Head Start and state prekindergarten programs are educational agencies or schools under

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the statutes and rules of Oregon and thus eligible for discounts under the E-rate program.

Rules Coordinator: Paula Merritt—(503) 947-5746

581-019-0033

Qualification for Federal E-rate Program

(1) As used in this rule, “E-rate program” means the Schools and Libraries Program of the Universal Service Fund administered by the Universal Service Administrative Company for the Federal Communications Commission.

(2) For purposes of the E-rate program, Federal Head Start and state prekindergarten programs are schools and as such may qualify for discounts under the E-rate program to help schools and libraries obtain affordable telecommunications and Internet access.

Stat. Auth.: ORS 329.195

Stats. Implemented: ORS 329.170 - 329.200

Hist.: ODE 7-2008(Temp), f. & cert. ef. 2-22-08 thru 8-20-08

Oregon Government Ethics Commission Chapter 199

Rule Caption: Lobbying Expenditure Reporting Requirements and Statement of Economic Interest Filing Exemption Process.

Adm. Order No.: GEC 1-2008(Temp)

Filed with Sec. of State: 3-7-2008

Certified to be Effective: 3-7-08 thru 5-6-08

Notice Publication Date:

Rules Adopted: 199-020-0007

Rules Amended: 199-010-0075, 199-010-0095

Rules Suspended: 199-020-0005

Subject: The purpose of this action is intended to amend existing rules and to establish new content for quarterly lobbying expenditure reports required by ORS 171.745 and ORS 171.750; to add a new rule to create a process for requesting an exemption from the Annual Verified Statement of Economic Interest filing process required by ORS 244.050; and to suspend certain rules that are no longer operative following January 1, 2008 effective date of OR Laws, Chapter 877 (SB 10).

Rules Coordinator: Virginia Lutz—(503) 378-5105

199-010-0075

Content of Quarterly Report of Lobbying Expenditures by Lobbyists (ORS 171.745(1))

(1) Part A: A lobbyist must list the total amount of money spent during the reporting period for all lobbying activity expenditures that were made for food, refreshment and entertainment during the reporting period as required by ORS 171.745(1)(a).

(a) The only entertainment that may be offered to and accepted by a public official or a relative of the public official or a member of the household of the public official, is entertainment accepted under conditions described in ORS 244.020(5)(a)(M) or 244.020(5)(a)(N).

(b) The lobbyist must list the sums reimbursed for food, refreshment and entertainment and must include the amount and identify each client or employer that provided the reimbursement.

(A) If a lobbyist initiates and participates in the lobbying activity and uses or arranges for payment with a credit card, debit card or any other form of payment, it is the lobbyist's responsibility to report the expense. In the following examples, the methods of payment are the equivalent of a reimbursed expense that must be reported by the lobbyist:

(i) A lobbyist arranges a lobbying activity and those arrangements include placing the charges on a credit or debit card account belonging to the lobbyist's client or employer.

(ii) A lobbyist registered to represent a client or employer is also an employee or executive official of that same client or employer. The client or employer is the holder of a credit or debit card and authorizes the lobbyist to use the credit or debit card.

(iii) A lobbyist places a lobbying activity expense on a personal or business account. When the billing statement is received, it is submitted to and paid by the represented client or employer.

(c) The lobbyist must list the net expenditures made for food, refreshment and entertainment, which is the result of subtracting the total of expenditures reimbursed by the client or employer from the total of all expenditures reported.

(d) If lobbying services are provided by two or more registered lobbyists from the same business, public agency or other organization, a Quarterly Lobbying Expenditure Report may be filed that consolidates the lobbying activity expenditures of the lobbyists of the business, public agency or organization. The lobbying activity expenses reimbursed to each individual lobbyist must be detailed as required in (1)(b) and (1)(c) of this rule. To use this method of reporting lobbying expenditures contact the Oregon Government Ethics Commission for additional information (ORS 171.745(4)).

(2) Part B: A lobbyist must list each occasion when an amount exceeding \$50 was spent for a lobbying purpose that was for the benefit of a legislative or executive official. The information listed must include the date, name of the official, payee and purpose (ORS 171.745(1)(b)).

(a) If a legislative or executive official was accompanied by a relative or a member of the official's household on the itemized occasion, the expenditure made for the benefit of the relative or a member of the official's household is part of the aggregate value of the lobbying expenditure that was for the benefit of the legislative or executive official. The relative or member of the household that accompanied the official must be identified.

(b) If a relative or a member of the household of a legislative or executive official is not accompanied by the legislative or executive official on the itemized occasion, the expenditure made for the benefit of the relative or a member of the official's household is the value of the lobbying expenditure that was for the benefit of the legislative or executive official. The relative or member of the household that participated must be identified.

(c) When a legislative or executive official receives a benefit exceeding \$50 and the expense is shared by two or more lobbyists, one lobbyist must be designated to itemize the occasion in the designated lobbyist's Quarterly Lobbying Expenditure Report. The lobbyist designated to itemize the occasion must also identify the other lobbyists and amount paid by each (ORS 171.745(1)(b) and 244.025(1)).

(d) If a client or employer of the lobbyist has itemized the expenditure as required by ORS 171.750(1)(b) and OAR 199-010-0095, in Part B of the client's or employer's Quarterly Lobbying Expenditure Report, the expenditure does not have to be itemized by the lobbyist.

(e) If a business, public agency or other organization, with two or more lobbyists, chooses to file a Quarterly Lobbying Expenditure Report that consolidates the lobbying activity expenditures of the lobbyists, the itemization of the occasion must include the identity of the individual lobbyists responsible for the itemized lobbying activity expense (ORS 171.745(4)).

(3) The lobbyist must attach to the Quarterly Lobbying Expenditure Report, copies of any written notices that were provided to legislative or executive officials as required by ORS 244.100(2)(a) and 244.100(2)(b).

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 171.745

Hist.: EC 2(Temp), f. & ef. 2-14-75 thru 6-14-75; EC 5, f. 7-7-75, ef. 7-25-75; EC 7(Temp), f. & ef. 10-8-75; EC 9, f. & ef. 1-23-76; EC 1-1980(Temp), f. & ef. 12-24-80; EC 1-1990, f. 7-31-90, cert. ef. 7-26-90; GSPC 1-1998(Temp), f. & cert. ef. 9-1-98 thru 2-28-99; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GSPC 1-2004, f. & cert. ef. 8-4-04; GEC 1-2008(Temp), f. & cert. ef. 3-7-08 thru 5-6-08

199-010-0095

Content of Quarterly Report of Lobbying Expenditures by the Client or Employer of a Lobbyist (ORS 171.750(1))

(1) Part A: An employer or client of a lobbyist must list the total of all money spent during the reporting period on lobbying related activities (ORS 171.750(1)(a)).

(a) Include expenses for travel related to lobbying activity, except for a lobbyist's food, lodging, travel and other personal expenses incurred while providing lobbying services in Salem (ORS 171.750(1)(c)).

(b) List each registered lobbyist who is compensated to provide lobbying services and include the amount paid in compensation and the amount paid in reimbursement to the lobbyist for food, refreshment and entertainment (ORS 171.750(1)(c)).

(c) If the lobbyist representing the client or employer has initiated and participated in a lobbying activity and has used or arranged for payment with the client's or employer's credit card, debit card or any other form of payment, it is the lobbyist's responsibility to report the expense as a reimbursement from the client or employer and the client or employer must list the expense as a reimbursement to the lobbyist. In the following examples, the methods of payment are the equivalent of a reimbursed expense to the lobbyist and must be reported as such by the client or employer:

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(A) A lobbyist arranges a lobbying activity and those arrangements include placing the charges on a credit or debit card account belonging to the lobbyist's client or employer.

(B) A lobbyist registered to represent a client or employer is also an employee or executive official of that same client or employer. The client or employer is the holder of a credit or debit card and authorizes the lobbyist to use the credit or debit card.

(C) A lobbyist places a lobbying activity expense on a personal or business account. When the billing statement is received, it is submitted to and paid by the represented client or employer.

(d) If lobbying services are provided to a client or employer by two or more registered lobbyists from the same business, public agency or other organization, list the amounts paid for compensation and for reimbursed expenses to the business, public agency or organization (ORS 171.750(1)(c)). In listing reimbursed expenses use the same criteria to identify a reimbursed expense as described in (1)(b) and (1)(c) of this rule.

(2) Part B: An employer or client must list each occasion when an amount exceeding \$50 was spent for a lobbying purpose that was for the benefit of a legislative or executive official. The information listed must include the date, name of the official, payee and purpose (ORS 171.750(1)(b)).

(a) If a legislative or executive official was accompanied by a relative or a member of the official's household on the itemized occasion, the expenditure made for the benefit of the relative or a member of the official's household is part of the aggregate value of the lobbying expenditure that was for the benefit of the legislative or executive official. The relative or member of the household that accompanied the official must be identified.

(b) If a relative or a member of the household of a legislative or executive official is not accompanied by the legislative or executive official on the itemized occasion, the expenditure made for the benefit of the relative or a member of the official's household is the value of the lobbying expenditure that was for the benefit of the legislative or executive official. The relative or member of the household that participated must be identified.

(c) When a legislative or executive official receives a benefit exceeding \$50 and the expense is shared by two or more clients or employers, one client or employer must be designated to itemize the occasion in the designated client's or employer's Quarterly Lobbying Expenditure Report. The client or employer designated to itemize the occasion must also identify the other clients or employers and amount paid by each (ORS 171.750(1)(b) and 244.025(1)).

(d) If the lobbyist representing the client or employer has itemized the expenditure as required by ORS 171.745(1)(b) and OAR 199-010-0075, Part B of the lobbyist's Quarterly Lobbying Expenditure Report, it does not have to be itemized by the client or employer of the lobbyist.

(e) If the client or employer of a lobbyist has reimbursed the lobbyist for an occasion that is itemized in Part B of the client's or employer's Quarterly Lobbying Expenditure Report, the lobbyist who received the reimbursement must be identified.

(3) The client or employer of a lobbyist must attach to the Quarterly Lobbying Expenditure Report, copies of any written notices that were provided to legislative or executive officials as required by ORS 244.100(2)(a) and 244.100(2)(b).

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 171.750

Hist.: EC 2(Temp), f. & ef. 2-14-75 thru 6-14-75; EC 5, f. 7-7-75, ef. 7-25-75; EC 7(Temp), f. & ef. 10-8-75; EC 9, f. & ef. 1-23-76; EC 1-1989(Temp), f. & cert. ef. 1-18-89; EC 1-1990, f. 7-31-90, cert. ef. 7-26-90; GSPC 1-1998(Temp), f. & cert. ef. 9-1-98 thru 2-28-99; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; GSPC 1-2002, f. & cert. ef. 10-18-02; GSPC 1-2004, f. & cert. ef. 8-4-04; GEC 1-2008(Temp), f. & cert. ef. 3-7-08 thru 5-6-08

199-020-0005

Cities and Counties Required to File Statements of Economic Interest

(1) Every elected city and county official and every person appointed to an elective office to fill a vacancy; every member of a city and county planning, zoning, or development commission and every person appointed to fill a vacancy; and every employee of a city or county who serves as the chief executive officer thereof, in the following cities and counties where a majority of votes cast in that city or county in the 1974 General Election was in favor of the Ballot Measure provided for in Section 10, Chapter 68, Oregon Laws 1974 (Special Session) or those cities or counties which voted again on the matter as provided by ORS 244.201 must file an Annual Verified Statement of Economic Interest with the Oregon Government Standards and Practices Commission: Those cities and counties voting in favor of the Measure are:

(a) Baker Co. — Baker City;

(b) Benton Co. — Corvallis, Monroe, Philomath;

(c) Clackamas Co. — Canby, Estacada, Gladstone, Happy Valley, Johnson City, Lake Oswego, Milwaukie, Molalla, Oregon City, Sandy, Tualatin, West Linn, Wilsonville;

(d) Clatsop Co. — Astoria, Cannon Beach, Gearhart, Seaside, Warrenton;

(e) Columbia Co. — Columbia City, Rainier, St. Helens, Scappoose, Vernonia;

(f) Coos Co. — Bandon, Coos Bay, Coquille, Myrtle Point, North Bend, Powers, Lakeside;

(g) Crook Co. — Prineville;

(h) Curry Co. — Brookings, Gold Beach, Port Orford;

(i) Deschutes Co. — Bend, Redmond, Sisters;

(j) Douglas Co. — Drain, Elkton, Myrtle Creek, Reedsport, Riddle, Roseburg, Sutherlin, Winston;

(k) Harney Co. — Burns, Hines;

(l) Hood River Co. — Cascade Locks, Hood River;

(m) Jackson Co. — Ashland, Central Point, Eagle Point, Gold Hill, Jacksonville, Medford, Phoenix, Shady Cove, Talent;

(n) Jefferson Co. — Culver, Madras;

(o) Josephine Co. — Cave Junction, Grants Pass;

(p) Klamath Co. — Klamath Falls;

(q) Lane Co. — Coburg, Cottage Grove, Creswell, Dunes City, Eugene, Florence, Junction City, Lowell, Oakridge, Springfield, Veneta;

(r) Lincoln Co. — Depoe Bay, Lincoln City, Newport, Siletz, Toledo, Waldport, Yachats;

(s) Linn Co. — Albany, Brownsville, Halsey, Lebanon, Lyons, Mill City, Millersburg, Sweet Home, Tangent;

(t) Malheur Co. — Ontario;

(u) Marion Co. — Aumsville, Aurora, Donald, Gervais, Hubbard, Jefferson, Salem, Silverton, Stayton, Woodburn;

(v) Multnomah Co. — Fairview, Gresham, Maywood Park, Portland, Troutdale, Wood Village;

(w) Polk Co. — Dallas, Falls City, Independence, Monmouth, Willamina;

(x) Tillamook Co. — Bay City, Garibaldi, Rockaway Beach, Tillamook;

(y) Umatilla Co. — Hermiston, Pendleton;

(z) Union Co. — LaGrande, Union;

(aa) Wallowa Co.;

(bb) Wasco Co. — Mosier, The Dalles;

(cc) Washington Co. — Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, North Plains, Sherwood, Tigard;

(dd) Yamhill Co. — Amity, Carlton, Dayton, Dundee, Lafayette, McMinnville, Newberg, Sheridan.

(2) Cities, counties, state boards and commissions, and others affected by these filing requirements shall inform the Oregon Government Standards and Practices Commission of the names and addresses of those individuals required to file the Statements.

Stat. Auth.: ORS 244.290(5)

Stats. Implemented: ORS 244.050

Hist.: EC 4(Temp), f. & ef. 5-29-75; EC 6, f. & ef. 10-8-75; EC 1-1990, f. 7-31-90, cert. ef. 7-26-90; EC 1-1993, f. & cert. ef. 4-22-93; GSPC 1-1999, f. 7-29-99, cert. ef. 8-1-99; Suspended by GEC 1-2008(Temp), f. & cert. ef. 3-7-08 thru 5-6-08

199-020-0007

Exemption Procedure for Annual Verified Statements of Economic Interest

(1) This rule implements ORS 244.290(2)(b), directing the Commission to allow exemptions for public officials who are otherwise required by ORS 244.050 to file an annual statement of economic interest when the public body on which the public official serves meets so infrequently so as not to warrant the public disclosure. Public officials shall submit a request for an exemption from the filing requirements of ORS 244.050 on a form prescribed by the Commission.

(2) Only public officials required to file under ORS 244.050(1)(j) are eligible to request the exemption under this rule. The Commission will accept requests that are submitted on behalf of all of the public officials serving on a particular city or county planning, zoning or development commission.

(3) The Commission will grant the exemption if the following criteria are met:

(a) The public body on which the public official serves has met no more frequently than twice annually for the last three calendar years.

(b) The public body has no decision making authority, but limits its function to making recommendations to an accountable public body or public official.

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(c) The request for exemption is accompanied with copies of agendas and meeting minutes for all meetings conducted by the public body within the last three calendar years, as well as documentation of the authority or role of the public body.

(4) Applications for an exemption from filing the annual verified statement of economic interest for 2007, due April 15, 2008, must be received in the office of the Oregon Government Ethics Commission not later than 5:00 pm March 31, 2008. Public officials who do not meet that deadline, or whose application is not approved by the Commission, must file the annual verified statement of economic interest as required by April 15, 2008. Public officials who receive the exemption will be notified in writing. The exemption will also apply to the quarterly public official disclosure form required by ORS 244.100.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.050, 244.290

Hist.: GEC 1-2008(Temp), f. & cert. ef. 3-7-08 thru 5-6-08

Rule Caption: Adopts rules providing gift and honorarium guidelines to public officials.

Adm. Order No.: GEC 2-2008

Filed with Sec. of State: 3-7-2008

Certified to be Effective: 3-7-08

Notice Publication Date: 1-1-2008

Rules Adopted: 199-005-0005, 199-005-0010, 199-005-0015, 199-005-0020, 199-005-0025, 199-005-0030, 199-005-0035

Subject: Adopts rules interpreting 2007 revision to ORS Chapter 244. The rules address the following topics: determining the value of items or services received by public officials; ensuring accurate reporting of and compliance with gift and honoraria limits; determining the value of unsolicited tokens or awards; defining terms in the exceptions for receptions, meals or meetings; payments for travel, entertainment and other gift exceptions, and determining the source of gifts. The rules are intended to provide guidelines for compliance through defining terms and clarifying substantive provisions of governments ethics law.

Rules Coordinator: Virginia Lutz—(503) 378-5105

199-005-0005

Determining the Value Received by Public Officials

(1) Purpose. The purpose of this rule is to guide public officials, candidates and others in determining the value of items or services received by public officials to ensure accurate reporting in ORS 244.100 and to comply with gift and honoraria limits in ORS 244.025 and 244.042.

(2) The fair market value of the merchandise, goods, or services received shall be used to determine benefit or value. Fair market value is the dollar amount goods or services would bring if offered for sale by a person who desired, but was not obligated, to sell and purchased by one who is willing, but not obligated, to buy.

(a) In calculating the benefit or value conferred to a public official, any portion of the benefit transferred to an entity that is tax-exempt under section 501(c) of the Internal Revenue Code shall not be included as part of the benefit or value to the public official, if the public official does not claim the charitable contribution on personal tax returns.

(b) In calculating the per person cost at receptions or meals the payor of the public official's admission or meal shall include all costs other than any amount donated to a charity.

(c) The following example demonstrates how the value of a charitable dinner would be calculated. A person with a legislative or administrative interest buys a table for a charitable dinner at \$100 per person. If the cost of the meal was \$25 and the amount donated to charity was \$75, the benefit conferred on the public official is \$25. This example requires that the public official does not claim the charitable contribution on personal tax returns.

(3) For receptions and meals with multiple attendees, but with no price established to attend, the source of the public official's meal or reception shall use reasonable methods to determine the per person value or benefit conferred. The following examples are deemed reasonable methods of calculating value or benefit conferred:

(a) The source divides the amount spent on food, beverage and other costs (other than charitable contributions) by the number of persons whom the payor reasonably expects to attend the reception or dinner;

(b) The source divides the amount spent on food, beverage and other costs (other than charitable contributions) by the number of persons who actually attend the reception or dinner; or

(c) The source calculates the actual amount spent on the public official.

(4) Upon request by the public official, the source shall give notice of the value of the merchandise, goods, or services received.

(5) Attendance at receptions that qualify as an exception to the gift definition under ORS 244.020(5)(b)(L) is permitted without regard to the fair market value of the food and beverage provided.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.020, 244.025, 244.042 & 244.100

Hist.: GEC 2-2008, f. & cert. ef. 3-7-08

199-005-0010

Resale Value of Unsolicited Tokens or Awards

(1) The purpose of this rule is to assist public officials in determining the resale value of items provided under ORS 244.020(5)(b)(C).

(2) Engraved or otherwise personalized items that include a public official's name are deemed to have a resale value under \$25, unless the personalized item is made from gold or some other valuable material that would have value over \$25 as a raw material.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.020

Hist.: GEC 2-2008, f. & cert. ef. 3-7-08

199-005-0015

Attendance at Receptions, Meals or Meetings under ORS 244.020(5)(b)(E)

(1) The purpose of this exception is to allow public officials to attend organized, planned events and engage with the members of organizations by speaking or answering questions, participating in panel discussions or otherwise formally discussing matters in their official capacity. This exception to the gift definition does not authorize private meals where the participants engage in discussion. The following list of factors may indicate whether expenditures are permitted under this exception, although the event may qualify even if not every factor is met:

(a) A large number of people or groups are invited. For example, all members of an organization are invited.

(b) The invitations or programs are sent in advance.

(c) The event is publicized.

(d) The reception, meal, or meeting is open to the public.

(e) Written materials such as a printed program are available.

(f) The public official delivers a planned speech or remarks to the entire audience.

(g) The public official participates in a formal question and answer session before the entire audience.

(2) The following definitions apply to this rule.

(a) "Organization" means any public body, corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust, or other entity other than an individual.

(b) "Speak" means to give a speech or otherwise formally address or converse with the members of the organization or participants at a reception, meal, or meeting. Self introductions or other perfunctory remarks do not constitute speaking for purposes of this exception.

(c) "Answer Questions" means to engage in formal discussion, such as on a panel or some other arrangement, where a moderator or the participants of the reception, meal, or meeting ask questions to a public official.

(d) "Reception" means a social gathering. Receptions are often held for the purpose of extending a ceremonial or formal welcome and may include private or public meetings during which guests are honored or welcomed. Food and beverages are often provided, but not as a plated, sit-down meal.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.020

Hist.: GEC 2-2008, f. & cert. ef. 3-7-08

199-005-0020

Gift Exceptions in ORS 244.020(5)(b)(F) and (H)

(1) The purpose of this rule is to provide definitions and clarification for two of the gift exceptions that permit public officials to accept payment for travel conducted in the public official's official capacity, for certain limited purposes. Travel that meets the requirements of ORS 244.020(5)(b)(F) or (H) and this rule may be either within the United States or international.

(2) As this term is used in ORS 244.020(5)(b)(F) and (H), "representing" a unit of government (state, local or special government body) means that the public official is making an authorized appearance in an official capacity on behalf of the public body. Unless the employing public body determines otherwise in advance of the travel, the following is sufficient to constitute prior authorization:

(a) A supervisor may approve the public official's representation;

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(b) A governing board or commission of a public body may approve the representation of the governing board members or commissioners, respectively;

(c) An appointed committee of legislators may approve the representation of individual legislators; or

(d) Individual elected officials, such as the governor, judges, district attorneys or local or statewide elected officials, may authorize their own appearances.

(3) As the term is used in ORS 244.020(5)(b)(F), a “not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code and that receives less than five percent of its funding from for-profit organizations or entities” is determined to qualify as an eligible not-for-profit corporation meeting the 5% threshold by the information on the most recent tax return filed by the organization prior to the time the expenses for authorized travel were incurred.

(4) For purposes of ORS 244.020(5)(b)(H),

(a) A “fact finding mission” is any activity related to a cultural or educational purpose, or any activity aimed at providing intergovernmental assistance, such as for the purpose of international aid or sharing best practices, or developing intergovernmental relationships directly related to the public official’s duties. The sponsor of a fact finding mission should be directly and immediately associated with the event or location being visited.

(b) “Trade Promotion” means an activity for the purpose of encouraging or developing commerce or the buying and selling of goods and services.

(c) “Economic Development Activities” mean activities undertaken for the purpose of strengthening, expanding, or enhancing the economy, or activities that provide community development or cultural enhancement. Specific activities include, but are not limited to: promoting tourism; promoting a favorable investment climate to strengthen businesses; creating jobs; raising real wages; assisting Oregon communities to build a capacity to retain, expand or attract business; improving national and global competitiveness of Oregon companies; improving transportation access; and marketing products, services, or opportunities.

(d) “Officially Sanctioned” means approved by a state or local public body in writing by a person authorized by the public body to provide that approval, or at a public meeting by the governing body to the public body. Unless the public body determines otherwise, the following is sufficient to constitute officially sanctioned:

(A) A supervisor may approve expenses for an employee;

(B) A governing board or commission of a public body may approve expenses for governing board members or commissioners, respectively;

(C) An appointed committee of legislators may approve expenses for individual legislative officials; or

(D) Individual elected officials, such as the governor, judges, district attorneys or local or statewide elected officials may authorize their own expenses.

(E) Local or statewide executive department heads who do not report to a supervisor may authorize their own expenses.

(e) “Expenses Approved in Advance” means expenses approved by the public body, either in writing by a person authorized by the public body to provide that approval, or at a public meeting by the governing body to the public body before the time of the activity. Unless the public body determines otherwise, the following is sufficient to constitute authorization:

(A) A supervisor may approve expenses for an employee;

(B) A governing board or commission of a public body may approve expenses for governing board members or commissioners, respectively;

(C) An appointed committee of legislators may approve expenses for individual legislative officials; or

(D) Individual elected officials, such as the governor, judges, district attorneys or statewide elected officials, may authorize their own expenses.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.020

Hist.: GEC 2-2008, f. & cert. ef. 3-7-08

199-005-0025

Receptions and Entertainment permitted under ORS 244.020(5)(b)(L), (M) and (N)

(1) The purpose of this rule is to clarify terms used in the three gift exceptions in ORS 244.020(5)(b)(L), (M) and (N).

(2) A “reception” means a social gathering as defined in OAR 199-005-0015(2)(d).

(3) “Incidental” means secondary or minor, but associated to something more important. Entertainment that is incidental to the main purpose of another event is provided in conjunction with a primary event (such as a

singer or band at an awards dinner). Incidental entertainment is secondary in importance and in time devoted to the entertainment compared to the primary, non-entertainment event. Entertainment that involves personal participation is not incidental to another event (such as a golf tournament at a conference).

(4) “Entertainment” means amusement or diversion. Entertainment may be provided by others (such as athletes at sporting events) but also includes events where the public official, relative, or member of household personally participates. Examples of entertainment include, but are not limited to concerts, plays, movies, operas, sporting events, participating in sports (golf, skiing, hunting or fishing, etc), comedy shows, and similar events.

(5) A public official appears at an entertainment event for a “ceremonial purpose” when the source of the entertainment requests the presence of the public official at a special occasion associated with the entertainment. Staff members accompanying a public official may also attend if they are performing official duties. An example of an appearance by a public official at an entertainment event for a ceremonial purpose includes, but is not limited to, throwing the first pitch at a professional or college baseball game, appearing in a parade, and ribbon cutting for an opening ceremony. To qualify, the entertainment must be provided by the source of the entertainment, and the public official must have an official role in the entertainment event.

(6) “Representing” state, local or special government bodies has the meaning defined in OAR 199-005-0020(2).

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.0020

Hist.: GEC 2-2008, f. & cert. ef. 3-7-08

199-005-0030

Determining the Source of Gifts

(1) ORS 244.025 and 244.040(2)(e) limit the offering and receipt of gifts from sources that could reasonably be known to have a legislative or administrative interest in the governmental agency over which the public official holds any official position or over which the official exercises any authority. This rule is intended to clarify how a public official determines who the source of the gift is. Public officials need to be aware of the source of any gifts they receive (or those that are received by their relatives or members of their household), regardless of amount, to make sure that they comply with the \$50 limit on gifts from a single source in a calendar year. To that end, public officials should not accept gifts in any amount without obtaining information from the person or entity offering the gift as to who is the source of the gift. It is the public official’s personal responsibility to ensure that no single source provides gifts exceeding an aggregate value of \$50 in a calendar year, if the source has a legislative or administrative interest.

(2) The source of any gift provided to a public official is the ultimate payor(s) of the expense.

(3) The \$50 gift limit in ORS 244.025 applies separately to the public official or candidate, and to the public official or candidate’s relatives or members of household. Each such individual may accept gifts from a single source of a total of \$50 per calendar year.

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.0025, 244.040

Hist.: GEC 2-2008, f. & cert. ef. 3-7-08

199-005-0035

Guidelines for compliance with ORS 244.020(5), 244.025, 244.040, 244.042 and 244.047

(1) The purpose of this rule is to define certain terms and to clarify substantive provisions of ORS 244.020(5), 244.025, 244.040, 244.042 and 244.047.

(2) The terms “official capacity” or “official duties”, means that the public official’s actions are directly related to serving the state of Oregon or any of its political subdivisions or any other public body as a public official.

(3) An “official compensation package” means the wages and other benefits provided to the public official. To be part of the public official’s “official compensation package”, the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials. “Official compensation package” also includes the direct payment of a public official’s expenses by the public body, in accordance with the public body’s policies.

(4) As used in ORS 244.040(2)(c), “reimbursement of expenses” means the payment by a public body to a public official serving that public

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body, of expenses incurred in the conduct of official duties on behalf of the public body. Any such repayment must comply with any applicable laws and policies governing the eligibility of such repayment. Expenses paid by the public body to their own public officials need not be reported by the public official under ORS 244.100.

(5) "Confidential information" means any record that is exempt from public disclosure or inspection under state law, or any information obtained in the course of or by reason of holding position as a public official that is not publicly disclosed. The record or information is no longer confidential if it has been voluntarily disclosed by the public body, or been disclosed through a public records disclosure order or court order.

(6) As used in ORS 244.047, a public contract is "authorized by" a public official if the public official performed a significant role in the selection of a contractor or the execution of the contract. A significant role can include recommending approval or signing of the contract, including serving on a selection committee or team, or having the final authorizing authority for the contract.

(7) As defined in ORS 244.020(13), a public official includes anyone serving the State of Oregon or any of its political subdivisions or any other public body in any of the listed capacities, including as an "agent or otherwise." An "agent or otherwise" means any individual performing governmental functions. Governmental functions are services provided on behalf of the government as distinguished from services provided to the government. This may include private contractors and volunteers, depending on the circumstances. This term shall be interpreted consistently with Attorney General Opinion No. 8214 (1990).

Stat. Auth.: ORS 244.290

Stats. Implemented: ORS 244.020, 244.025, 244.040, 244.042, 244.047

Hist.: GEC 2-2008, f. & cert. ef. 3-7-08

Oregon Health Licensing Agency
Chapter 331

Rule Caption: Establishment of qualification requirements and fees for certified sex offender therapists to implement regulatory program.

Adm. Order No.: HLA 1-2008(Temp)

Filed with Sec. of State: 3-14-2008

Certified to be Effective: 3-15-08 thru 9-1-08

Notice Publication Date:

Rules Adopted: 331-800-0010, 331-800-0020, 331-810-0020, 331-810-0030, 331-810-0035, 331-810-0040, 331-820-0010, 331-820-0020, 331-850-0010

Subject: Passage of HB 3233 (Oregon Laws 2007, Ch. 841) by the 2007 legislature created the Sex Offender treatment Board within Oregon Health Licensing Agency, and established a Title Act for certifying clinical and associate sex offender therapists. The law became effective July 27, 2007. Board members were appointed by the Governor, confirmed by the Senate, and the Board held an initial meeting on November 30, 2007 to start the process of developing operating rules.

The agency, in consultation with the Board, adopted temporary operating rules to become effective on **March 15, 2008**. The rules address definitions of terms used in the rules, the program fee structure, requirements for application and certification of clinical and associate level therapists, qualification criteria/certification requirements under a one-year time limitation (grandfather provision) for individuals who are currently providing sex offender therapy, and reciprocal qualification criteria. Adoption of the temporary rules is necessary to initiate the certification of qualified applicants and to implement regulatory and administrative objectives and fund the program.

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

331-800-0010

Definitions

The following definitions apply to OAR 331-800-0010 to 331-850-0010:

(1) "Active certificate" means a certificate issued when all requirements are met, fees paid and certificate is not expired, suspended or revoked.

(2) "Affidavit of licensure" means an original document verifying licensing history and status, issued by the licensing authority in the state which issued the license with an official seal or stamp affixed to the document; it is not the certificate or license form issued which authorizes the holder to practice.

(3) "Agency" means the Oregon Health Licensing Agency (OHLA). The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rule making, and record keeping.

(4) "Authorization" means the official document, the certificate, issued by the Oregon Health Licensing Agency.

(5) "Board" means pursuant to ORS 675.395, the entity that advises the agency in matters relating to the practice of sex offender treatment, including practice standards, education and training requirements, and advises the agency on all disciplinary issues in accordance with ORS 676.612. The Oregon Health Licensing Agency Director controls the regulatory operations and has decision-making authority on all substantive matters.

(6) "Certified clinical sex offender therapist" means a person who is certified by the agency to provide services for the treatment and rehabilitation of sex offenders and who may supervise certified associate sex offender therapist; also referred to as "clinical therapist".

(7) "Certified associate sex offender therapist" means a person who is certified by the agency to provide services for the treatment and rehabilitation of sex offenders while under the direct supervision of a certified clinical sex offender therapist; also referred to as "associate therapist".

(8) "Continuing education hours" means the actual academic classroom or course work time, including but not limited to workshops, symposiums, seminars, excluding personal travel time to and from the training site, registration or check-in periods breaks or lunch periods.

(9) "Credential" or its derivative means the process of licensing, registration, certification or the equivalent through which a person is legally recognized by a state agency as lawfully authorized to practice a health profession.

(10) "Direct supervision" means a minimum of two hours of supervision by a certified clinical sex offender therapist for each 45 hours of direct clinical contact with a sex offender as specified in ORS 675.365(4).

(11) "Direct treatment services" means face-to-face individual, group or family therapy, provided by a clinical or associate therapist, to a client.

(12) "Director" means, pursuant to ORS Chapter 676.610, the individual who has sole responsibility for the administrative, fiscal, human resource and regulatory functions of the agency.

(13) "Ethical" means conforming to professional standards, as adopted by the Association for the Treatment of Sexual Abusers' Practice Standards (ATSA) and Guidelines adopted in 2005, and Professional Code of Ethics adopted in 2001, regarding professional practices authorized under ORS 675.360 to 675.410 and rules adopted by the agency.

(14) "Evaluation" means a comprehensive psychosexual assessment or intake assessment conforming to professional standards as adopted by the Association for Treatment of Sexual Abusers' Practice Standards and Guidelines adopted in 2005, to determine a client's risk to re-offend, identify dynamic risk factors, and develop appropriate treatment and supervision plans. Evaluation includes a written report including, but not limited to the following:

(a) Useful guidance to others, such as the courts, in making decisions affecting a client's future and whether the client's risk can be managed in a community setting;

(b) Comprehensive description of the client's abusive and non-abusive sexual behavior;

(c) Amenability to treatment;

(d) Recommendations regarding the intensity and type of intervention that is required;

(e) Risk management strategies;

(f) Responsiveness to treatment, such as culture, ethnicity, age, IQ, learning style, neuropsychological disorders, personality style, mental and physical disabilities, medication, and motivation.

(15) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(16) "Informed consent" means consent obtained following a thorough and easily understood explanation to the client, or the client's guardian, of the proposed treatment plan, any available alternative procedures and any risks associated with the proposed plan. The therapist provides clients with information about the purpose, goals, techniques, procedures, limitations, and consequences of not consenting, the limits of confi-

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dentiality, and alternatives to the services offered, potential risks and benefits of services to be performed. Supervisors ascertain the client's ability to understand and utilize the information.

(17) "Functionally disabled" means a severe and chronic disability that is attributable to a mental or physical impairment or a combination of physical and mental impairments which result in substantial functional limitations in three or more of the major life activities.

(18) "Mental health professional" means a person licensed to practice without supervision in the state of Oregon as a physician, psychiatrist, psychiatric nurse practitioner, psychologist, psychological associate, licensed professional counselor, licensed clinical social worker, or licensed marriage and family therapist, who provides sex offender treatment of adults, juveniles or functionally disabled individuals.

(19) "Official transcript" means an original document certified by an accredited educational institution, delivered from the school to the agency by mail or courier, which includes:

- (a) School name and location;
- (b) Student's name, address and date of birth;
- (c) Enrollment and termination dates;
- (d) Hours and types of course work;
- (e) Degree issued;
- (f) School seal or stamp;
- (g) Signature of authorized school representative or registrar.

(20) "Oregon Health Licensing Agency" (OHLA) means the agency assigned to carry out the administrative, programmatic and daily operations, and regulatory functions of ORS 676.606.

(21) "Professional mental health licensing or certification agency" means the entity charged with the administrative functions and responsibilities for protecting the public through the licensing and regulating of certain professions practiced in Oregon, or in a county, other state, country or territory. The entity has the responsibility for decisions on qualifications, standards of practice, licensing, discipline and other discretionary functions relating to professional activities in the professional licensing boards, councils, or programs; also known as regulatory authority.

(22) "Reciprocity" means, according to ORS 675.380, certification, registration or licensure in another state based on standards of training, education and experience that are similar to those required for certification in Oregon as a certified clinical sex offender therapist or a certified associate sex offender therapist as specified in ORS 675.375.

(23) "Sex offender specific treatment" means treatment modalities that are based on empirical research with regard to favorable treatment outcomes and are professionally accepted in the field of sex offender treatment of adults, juveniles, and functionally disabled individuals, with sexual behavior problems. Offense specific treatment is a comprehensive set of planned treatment experiences and interventions that modify sexually deviant thoughts, fantasies, and behaviors and that utilize specific strategies to promote change and to reduce the chance of re-offending.

(24) "Treatment plan" means an individualized written statement of intended care and services as documented in the evaluation that details how the client's treatment needs will be met while protecting the community during the course of treatment.

Stat. Auth.: ORS 675.410, 676.615
Stat. Implemented: ORS 675.360 through 675.410
Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08

331-800-0020

Fees

(1) Fees established by the Oregon Health Licensing Agency are as follows:

- (a) Application for certification:
 - (A) Clinical and associate therapist: \$350.
 - (B) Grandfathering provision — time limited to March 14, 2009: \$650.
- (b) Original certificate — one year: \$50.
- (c) Application for renewal: \$250.
- (d) Renewal certificate — two year: \$50.
- (e) Replacement certificate, including name change: \$25.
- (e) Delinquency fee: \$25 per month in expired status.

Stat. Auth.: ORS 675.405, 675.410, 676.625
Stat. Implemented: ORS 675.405
Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08

331-810-0020

Clinical Sex Offender Therapist Requirements

To qualify for certification as a clinical sex offender therapist, an applicant shall provide satisfactory evidence to the agency that requirements of ORS 675.375(3) have been met regarding education, training, and

experience in the evaluation, treatment, and management of individuals who sexually offend, in addition to other requirements specified in this rule. Required documentation includes the following:

(1) Affidavit of licensure form prescribed by the agency, received from the appropriate Oregon professional mental health licensing or certifying agency, substantiating active status in good standing as a licensed mental health professional defined in OAR 331-800-0010;

(2) Record of at least 2,000 hours of professional clinical experience, of which 1,000 hours relates to providing direct treatment services as defined in OAR 331-800-0010, within a period of not less than three nor more than six years immediately preceding the date of application.

(3) Record of 500 hours of evaluations as defined in OAR 331-800-0010, that includes but is not limited to the following types of professional activities:

- (a) Evaluation experience credit:
 - (A) Primary or secondary responsibility for interviewing the client;
 - (B) Preparation of the written evaluation report;
 - (C) All contact with clients; and
 - (D) Preparation of limited assessments for the purpose of:
 - (i) Institution classification;
 - (ii) Treatment monitoring; and
 - (iii) Reporting.

(b) Treatment experience credit:

(A) Face-to-face treatment hours performed by affiliates under the supervision of certified therapists;

(B) Time spent as a co-therapist. Both therapists shall have formal responsibility for the group session; and

(C) Time spent maintaining collateral contacts and written case/progress notes.

(4) Record of 500 hours of professionally related activities, associated with the following type of work:

(a) At least 340 hours of documented activities, including but not limited to:

- (A) Client charting or case management;
- (B) Research;
- (C) Peer review, consultations, or meetings with attorneys, parole officers or other officials;
- (D) Court time or testimony;
- (E) Profession related committee work or attendance at sex offender treatment related meetings; and

(b) At least 160 hours of professional activities engaged in as a sex offender therapist, while under the direct supervision of a qualified mental health professional; refer to OAR 331-810-0050.

(5) Record of 60 hours of formal training directly related to the treatment and evaluation of sex offenders or victims of abuse that was completed within the last three years immediately preceding the date of application.

(a) Completion of formal training shall include documenting 75%, or 45 hours of the total required hours, in the following essential subjects:

- (A) Assessment and diagnosis;
- (B) Cognitive therapy;
- (C) Counseling and psychotherapy;
- (D) Cultural/ethnic issues;
- (E) Ethics applicable to working with a forensic population;
- (F) Human development with special attention to sexual development and healthy sexuality;

(G) Interviewing skills;

(H) Knowledge of family dynamics as related to sex offending;

(I) Psychometric and psycho-physiological testing;

(J) Psychopathology;

(K) Relapse prevention;

(L) Relationship and social skills training;

(M) Risk assessment;

(N) Sexual arousal control;

(O) Social support networks;

(P) Victim awareness and empathy.

(b) Completion of formal training shall include documenting 25%, or 15 hours of the total required hours, in the following areas of training and knowledge:

(A) Supervision;

(B) Assessment and treatment of mental illness including neuropsychological disorders;

(C) Couples and family therapy;

(D) Family reunification;

(E) Pharmacological therapy;

(F) Substance abuse treatment.

Stat. Auth.: ORS 675.375, 675.400, 676.615

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Stat. Implemented: ORS 675.375, 675.400
Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08

331-810-0030

Associate Sex Offender Therapist Requirements

To qualify for certification as an associate sex offender therapist, an applicant shall provide satisfactory evidence to the agency that requirements of ORS 675.375(4) have been met regarding education, training and experience, in addition to other requirements listed in this rule. Required documentation includes the following:

(1) Official transcripts from college, university and post graduate records, showing attainment of at least a Bachelors of Science degree in the mental health field;

(2) Record of at least 1,000 hours of professional experience related to direct treatment services, as defined in OAR 331-800-0010, completed within three years preceding the date of application. Documentation shall include the number of hours involved in the following:

- (a) Direct client contact;
- (b) Review of treatment plans and provision of direct treatment services under supervision;
- (c) Charting or case management;
- (d) Research;
- (e) Peer review, consultation, or meetings with attorneys, parole officers, or other officials;
- (f) Court time or testimony;
- (g) Profession related committee work or attendance at sex offender treatment related meetings; and

(3) Record of at least 30 hours of formal training directly related to the treatment and evaluation of sex offenders or victims of abuse that was completed within the last three years immediately preceding the date of application.

(a) Completion of formal training shall include documenting 75%, or 22.5 hours of the total required hours, in the following essential subjects:

- (A) Assessment and diagnosis;
- (B) Cognitive therapy;
- (C) Counseling and psychotherapy;
- (D) Cultural/ethnic issues;
- (E) Ethics applicable to working with a forensic population;
- (F) Human development with special attention to sexual development and healthy sexuality;
- (G) Interviewing skills;
- (H) Knowledge of family dynamics as related to sex offending;
- (I) Psychometric and psycho-physiological testing;
- (J) Psychopathology;
- (K) Relapse prevention;
- (L) Relationship and social skills training;
- (M) Risk assessment;
- (N) Sexual arousal control;
- (O) Social support networks;
- (P) Victim awareness and empathy.

(b) Completion of formal training shall include documenting 25%, or 7.5 hours of the total required hours, in the following areas of training and knowledge:

- (A) Supervision;
- (B) Assessment and treatment of mental illness including neuropsychological disorders;
- (C) Couples and family therapy;
- (D) Family reunification;
- (E) Pharmacological therapy;
- (F) Substance abuse treatment.

(4) Verification of and compliance with the requirements of direct supervision by a certified clinical sex offender therapist, according to OAR 331-810-0055.

Stat. Auth.: ORS 675.375, 675.400, 676.615
Stat. Implemented: ORS 675.375, 675.400
Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08

331-810-0035

Time Limited Grandfathering Provision

(1) Time Limitation. Pursuant to ORS 675.410(2)(b), an applicant who possesses all the qualifications for certification as a clinical sex offender therapist, but does not hold a certificate, license or registration as an Oregon mental health professional, required under ORS 675.375(3)(c) and defined in OAR 331-800-0010, may qualify for certification under a time limited grandfather provision within one year from the effective date of this rule.

(2) In the absence of an applicant holding an Oregon professional mental health certification, license, or registration, an applicant shall meet the training, education and experience qualification requirements and be otherwise eligible to apply for and attain such an authorization to practice.

(3) References. An applicant shall submit professional references from three individuals familiar with their work in sex offender treatment, such as personnel associated with Oregon State Department of Corrections, judicial system, direct supervisor, or a coworker.

(4) Transcripts. An applicant shall cause to be submitted to the agency official transcripts from a college, university and post graduate records, showing attainment of at least a masters or higher level degree in behavioral sciences.

(5) Qualification Pathways. An applicant for certification under the time limited grandfathering provision shall provide documentation verifying required clinical experience, evaluation and treatment experience, and formal training listed in subsections (6) through (9) of this rule under one of the following timelines:

(a) Pathway one: An applicant shall meet all qualification criteria within a period of six years immediately preceding the date of application; or

(b) Pathway two: An applicant shall meet qualification criteria within a period of ten years immediately preceding the date of application, with the 120 hours of required formal training completed at a minimum of 30 hours per year during the previous 4 years preceding the date of application.

(6) Professional Clinical Experience. An applicant must provide a record of at least 6,000 hours of professional clinical experience, of which 3,000 hours relates to providing direct treatment services as defined in OAR 331-800-0010.

(7) Professional Evaluation and Treatment Experience. An applicant must provide a record of 1,500 hours of evaluations, as defined in OAR 331-800-0010, which includes but is not limited to the following types of professional activities:

- (a) Evaluation experience credit:
 - (A) Primary or secondary responsibility for interviewing the client;
 - (B) Preparation of the written evaluation report;
 - (C) All contact with clients; and
 - (D) Preparation of limited assessments for the purpose of:
- (E) Institution classification;
- (F) Treatment monitoring; and
- (G) Reporting.
- (b) Treatment experience credit:
 - (A) Face-to-face treatment hours performed by affiliates under the supervision of certified therapists;
 - (B) Time spent as a co-therapist. Both therapists shall have formal responsibility for the group session; and
 - (C) Time spent maintaining collateral contacts and written case/progress notes.

(8) Professional Activities. An applicant must provide a record of 1,500 hours of professionally related activities, associated with the following type of work:

(a) At least 1,200 hours of documented activities, including but not limited to:

- (A) Client charting or case management;
- (B) Research;
- (C) Peer review, consultations, or meetings with attorneys, parole officers or other officials;
- (D) Court time or testimony;
- (E) Profession related committee work or attendance at sex offender treatment related meetings; and

(b) At least 300 hours of professional activities engaged in as a sex offender therapist, while under the direct supervision of a qualified mental health professional; refer to OAR 331-810-0055.

(9) Professional Formal Training. An applicant must provide a record of at least 120 hours of formal training directly related to the treatment and evaluation of sex offenders or victims of abuse:

(a) Completion of formal training shall include documenting 75%, or 90 hours of the total required hours, in the following essential subjects:

- (A) Assessment and diagnosis;
- (B) Cognitive therapy;
- (C) Counseling and psychotherapy;
- (D) Cultural/ethnic issues;
- (E) Ethics applicable to working with a forensic population;
- (F) Human development with special attention to sexual development and healthy sexuality;
- (G) Interviewing skills;

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- (H) Knowledge of family dynamics as related to sex offending;
- (I) Psychometric and psycho-physiological testing;
- (J) Psychopathology;
- (K) Relapse prevention;
- (L) Relationship and social skills training;
- (M) Risk assessment;
- (N) Sexual arousal control;
- (O) Social support networks;
- (P) Victim awareness and empathy.

(b) Completion of formal training shall include documenting 25%, or 30 hours of the total required hours, in the following areas of training and knowledge:

- (A) Supervision;
- (B) Assessment and treatment of mental illness including neuropsychological disorders;
- (C) Couples and family therapy;
- (D) Family reunification;
- (E) Pharmacological therapy;
- (F) Substance abuse treatment.

Stat. Auth.: ORS 675.375, 675.400, 675.410, 676.615

Stat. Implemented: ORS 675.375, 675.400

Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08

331-810-0040

Reciprocity; Equivalencies

Pursuant to ORS 675.380, an applicant who is recognized as a clinical sex offender therapist or associate sex offender therapist in another state may be issued Oregon certification as a sex offender therapist if the applicant's education, experience and formal training meet similar requirements for Oregon certification under ORS 675.375 and OAR 331-810-0020.

(1) Educational equivalency includes completion of the following:

(a) A masters or doctoral degree in social work, psychology, counseling, or educational psychology from a regionally accredited institution of higher education; or

(b) A masters or doctoral degree in an equivalent field from a regionally accredited institution of higher education and documentation of thirty graduate semester hours or forty-five graduate quarter hours in approved subject content listed in subsection (2) of this section.

(2) Approved subject content includes at least five graduate semester hours or seven graduate quarter hours in counseling, psychotherapy, and personality theory, and five graduate semester hours or seven graduate quarter hours in at least two of the following content areas:

- (a) Counseling and psychotherapy;
- (b) Personality theory;
- (c) Behavioral science and research;
- (d) Psychopathology/personality disorders;
- (e) Assessment/tests and measurement;
- (f) Group therapy/family therapy;
- (g) Human growth and development/sexuality; and
- (h) Corrections/criminal justice.

(3) Applicants must arrange for an affidavit of licensure form prescribed by the agency, to be received directly from the appropriate state agency, professional mental health licensing or certifying agency in the state where the applicant is currently licensed or certified, substantiating active status in good standing as a certified sex offender therapist defined in ORS 675.365.

(4) Applicants must document active practice as a certified sex offender therapist in another state during the previous two years immediately preceding application for Oregon certification.

(5) Applicants shall provide required documentation listed in OAR 331-030-0000, OAR 331-820-0010 and other information as may be requested by the agency to determine equivalent education, experience and formal training for Oregon certification as a sex offender therapist.

Stat. Auth.: ORS 675.375, 675.380, 675.400, 676.615

Stat. Implemented: ORS 675.375, 675.380, 675.400

Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08

331-820-0010

Application Requirements

(1) An individual applying for certification as a sex offender therapist under ORS 675.370 shall submit an application form prescribed by the agency, which contains information listed in OAR 331-030-0000, payment of required application and certification fees, and satisfactory evidence of meeting qualification criteria according to one of the following certification pathways:

(a) Clinical sex offender therapist: required documentation pertaining to education, training and experience listed in OAR 331-810-0020;

(b) Associate sex offender therapist: required documentation pertaining to education, training, experience and supervision listed in OAR 331-810-0030;

(c) Individuals applying under a time limited grandfather provision: required documentation pertaining to education, training and experience listed in OAR 331-810-0035; or

(d) Individuals applying under ORS 675.380 reciprocal or equivalent credentials: required documentation pertaining to education, training and experience listed in OAR 331-810-0040.

(2) An application for certification shall be accompanied by a proposed professional disclosure statement, required under ORS 675.375(1), and the applicant's fingerprint and criminal background check forms prescribed by the agency.

Stat. Auth.: ORS 675.375, 675.400, 676.607, 676.615,

Stat. Implemented: ORS 675.375, 675.400, 675.410

Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08

331-820-0020

License Issuance and Renewal

(1) Certified clinical sex offender therapists and certified associate sex offender therapists are subject to the provisions of OAR 331-030-0010 regarding the issuance and renewal of a certificate, and to the provisions of OAR 331-030-0020 regarding the authorization to practice, identification and the requirements for issuance of a duplicate authorization.

(2) Notwithstanding ORS 675.375(5) and 331-030-0010(1), the certificate will be issued for a two-year period from the date all qualifications have been met.

(3) Renewal of a certificate shall be made in advance of the certification expiration date by submitting the following to the agency:

(a) Renewal application form;

(b) Renewal fees;

(c) Signed attestation of completion of required continuing education according to OAR 331-830-0010; and

(d) Satisfactory documentation recording at least 100 hours of clinical experience per year preceding renewal, of which 50 hours is related to direct clinical contact with sex offenders. Refer to OAR 331-830-0010.

(4) A completed certificate renewal application received by the agency or postmarked after a certificate has expired, but within three years from the expiration date, may be approved upon payment of the application for renewal and delinquency fees for each year in expired status, signed attestation of having obtained required continuing education pursuant to the provisions of ORS 675.375(5)(c) and OAR 331-810-0020 or 331-810-0030, and completion of the prescribed number of hours of clinical experience required in ORS 675.375(5)(b) for each year in expired status.

(5) A certificate that has been expired for more than three years shall be deemed invalid and may be reactivated by submitting to the agency the following requirements:

(a) Application form and information required according to OAR 331-030-0000 and 331-820-0010;

(b) Payment of application, reactivation and certificate fees;

(c) Completion of prescribed continuing education during period of inactive certification.

(6) Evidence of required continuing education shall be provided at the time of renewal by means of a prescribed self-attestation form certifying participation in approved continuing education.

(7) Continuing education documentation shall be accumulated and held by the certificate holder for a period of 3 years following renewal, or until submitted to the agency at the time of audit within the three year period.

Stat. Auth.: ORS 675.375, 675.400, 675.410, 676.615

Stat. Implemented: ORS 675.375, 675.400, 675.410

Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08

331-850-0010

Investigative Authority

The Oregon Health Licensing Agency may initiate and conduct investigations of matters relating to the practice of Sex Offender Treatment, pursuant to ORS 676.608, and may take appropriate disciplinary action in accordance with the provisions of ORS 676.612 and 675.385.

Stat. Auth.: ORS 675.385, 676.608, 676.612

Stat. Implemented: ORS 675.385, 676.608, 676.612

Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08

Oregon State Treasury
Chapter 170

Rule Caption: Criminal Records Check and Fitness Determination Rules.

ADMINISTRATIVE RULES

Adm. Order No.: OST 1-2008

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Subject: This rule controls acquisition of information about a subject individual's criminal history through criminal records checks or other means and the use of that information to determine whether the subject individual is fit to provide services as an employee, volunteer, board member, contractor or vendor.

Rules Coordinator: Sally Furze—(503) 378-4990

170-002-0010

Criminal Records Check And Fitness Determination Rules

(1) **Purpose.** This rule controls the OST's acquisition of information about a subject individual's criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is fit to provide services to the OST as an employee, volunteer, board member, contractor or vendor in a position covered by section (2)(n) of this rule. The fact that the OST approves a subject individual as fit does not guarantee the individual a position as an OST employee, volunteer, board member, contractor or vendor.

(2) **Definitions.** As used in OAR 170-002-0010, unless the context of the rule requires otherwise, the following definitions apply:

(a) "Approved" means that, pursuant to a preliminary fitness determination under section (4) of this rule or a final fitness determination under section (6) of this rule, an authorized designee has determined that the subject individual is fit to be an employee, volunteer, board member, contractor or vendor in a position covered by section (2)(n) of this rule.

(b) "Authorized Designee" means an OST employee authorized to obtain and review criminal offender information and other criminal records information about a subject individual through criminal records checks and other means, and to conduct a fitness determination in accordance with these rules.

(c) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(d) "Criminal Offender Information" includes records and related data as to physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police Bureau of Criminal Identification for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(e) "Crime Relevant to a Fitness Determination" means a crime listed or described in section (7) of this rule.

(f) "Criminal Records Check and Fitness Determination Rules" or "This Rule" means OAR 170-002-0010.

(g) "Criminal Records Check" or "CRC" means one of four processes undertaken to check the criminal history of a subject individual:

(A) A check of criminal offender information and motor vehicle registration and driving records conducted through use of the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police (LEDS Criminal Records Check);

(B) A check of Oregon criminal offender information, including thorough fingerprint identification, conducted by the Oregon Department of State Police at the OST's request (Oregon Criminal Records Check); or

(C) A nationwide check of federal criminal offender information, including thorough fingerprint identification, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at the OST's request (Nationwide Criminal Records Check); or

(D) A criminal records check provided by an independent contractor.

(h) "Denied" means that, pursuant to a preliminary fitness determination under section (4) of this rule or a final fitness determination under section (6) of this rule, an authorized designee has determined that the subject individual is not fit to be an employee, volunteer, board member, contractor or vendor in a position covered by section (2)(n) of this rule.

(i) "OST" means the Office of the State Treasurer or any subdivision thereof.

(j) "False Statement" means that, in association with an activity governed by these rules, a subject individual either provided the OST with materially false information about his or her criminal history, such as mate-

rially false information about his or her identity or conviction record, or failed to provide to the OST information material to determining his or her criminal history.

(k) "Fitness Determination" means a determination made by an authorized designee pursuant to the process established in section (4) of this rule (preliminary fitness determination) or section (6) of this rule (final fitness determination) that a subject individual is or is not fit to be a OST employee, volunteer, board member, contractor or vendor in a position covered by section (2)(n) of this rule.

(l) "Other Criminal Records Information" means any information, in addition to criminal offender information, sought or obtained by the OST about a subject individual relevant to determining the individual's criminal history.

(m) "Related" means that an individual has a relationship with another person described by one of the following labels: spouse, domestic partner, natural parent, foster parent, adoptive parent, stepparent, child, foster child, adopted child, stepchild, sibling, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(n) "Subject Individual" means an individual from whom the OST may require fingerprints for the purpose of conducting a criminal records check because the person:

(A) Is being considered for employment with the OST; or

(B) Provides services or seeks to provide services to the OST as a volunteer, contractor, or vendor; or

(C) Has been appointed or is being considered for appointment to a board or commission by the State Treasurer.

(3) Criminal Records Check Process

(a) Disclosure of Information by Subject Individual.

(A) Preliminary to a criminal records check, a subject individual shall complete and sign the OST Criminal Records Request Form and, if requested by the OST, a fingerprint card. Both forms ask for identifying information, e.g., name, birth date, Social Security Number, physical characteristics, marital status, driver's license or identification card number and current address. The OST Criminal Records Request Form also asks for information about prior residences and for details concerning any circumstance listed in section (4)(c)(A)–(F) of this rule.

(B) A subject individual shall complete and submit to the OST the OST Criminal Records Request Form and, if requested, a fingerprint card within three business days of receiving the forms. An authorized designee may extend the deadline for good cause.

(C) The OST shall receive a fingerprint card from a subject individual under the age of 18 years only if the subject individual also submits the written consent of a parent or guardian.

(D) Within a reasonable period of time as established by an authorized designee, a subject individual shall disclose additional information as requested by the OST in order to resolve an issue hindering the completion of a criminal records check, e.g., providing additional proof of identity.

(b) When a Criminal Records Check is Conducted. An authorized designee may conduct, or request that the Oregon Department of State Police conduct, a criminal records check when a subject individual is initially hired or appointed by the OST.

(c) Which Criminal Records Check(s) Is Conducted. When an authorized designee determines under subsection (b) of this section that a criminal record check is needed, the authorized designee shall proceed as follows:

(A) LEDS Criminal Records Check. The authorized designee may conduct a LEDS criminal records check as part of any fitness determination conducted in regard to a subject individual.

(B) Oregon Criminal Records Check. The authorized designee may request that the Oregon Department of State Police conduct an Oregon criminal records check.

(C) Nationwide Criminal Records Check. The authorized designee may request that the Oregon Department of State Police conduct a nationwide criminal records check.

(D) Background Check. The authorized designee may request that an independent contractor conduct a criminal records check.

(4) Preliminary Fitness Determination

(a) An authorized designee will conduct a preliminary fitness determination if the OST is interested in hiring a subject individual as an employee. The OST may conduct a preliminary fitness determination, as OST determines may be necessary or desirable, if OST is interested in accepting volunteer services from, hiring as a contractor or vendor, or appointing, a subject individual on a preliminary basis, pending a final fit-

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ness determination. Subsections (b) through (f) of this section shall apply only if the OST conducts a preliminary fitness determination.

(b) An authorized designee shall make a preliminary fitness determination about a subject individual based on information disclosed by the subject individual under section (3)(a) of this rule and a background check.

(c) The authorized designee shall approve a subject individual as fit on a preliminary basis if the authorized designee has no reason to believe that the subject individual has made a false statement and the information available to the authorized designee does not disclose that the subject individual:

(A) Has been convicted of, found guilty except for insanity (or comparable disposition) of, or has a pending indictment for a crime listed under section (7) of this rule;

(B) Within the last five years, has been arrested for or charged with a crime listed under section (7) of this rule;

(C) Is being investigated for, or has an outstanding warrant for a crime listed under section (7) of this rule;

(D) Is currently on probation, parole, or another form of post-prison supervision for a crime listed under section (7) of this rule;

(E) Has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under section (7) of this rule; or

(F) Has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed under section (7) of this rule; if committed by an adult.

(d) If the information available to the authorized designee discloses one or more of the circumstances identified in subsection (c) of this section, the authorized designee may nonetheless approve a subject individual as fit on a preliminary basis if the authorized designee concludes, after evaluating all available information, that hiring, appointing or accepting the services of the subject individual on a preliminary basis does not pose a risk of harm to the OST, its client entities, the State, or members of the public.

(e) If a subject individual is either approved or denied on the basis of a preliminary fitness determination, an authorized designee thereafter shall conduct a fitness determination under section (6) of this rule.

(f) A subject individual may not appeal a preliminary fitness determination, under the process provided under section (10) of this rule or otherwise.

(5) Hiring or Appointing on a Preliminary Basis

(a) The OST may hire, appoint or accept the services of a subject individual on a preliminary basis if an authorized designee has approved the subject individual on the basis of a preliminary fitness determination under section (4) of this rule.

(b) A subject individual hired, appointed or volunteering on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by the OST.

(c) A subject individual hired, appointed or volunteering on a preliminary basis is deemed to be on trial service and, if terminated prior to completion of a final fitness determination under section (6) of this rule may not appeal the termination under the process provided under section (10) of this rule.

(d) If a subject individual hired, appointed or volunteering on a preliminary basis is denied upon completion of a final fitness determination, as provided under section (6) of this rule, then the OST shall immediately terminate the subject individual's employment, appointment or services.

(e) A subject individual whose employment, appointment or services is terminated under subsection (d) of this section may avail himself or herself of the appeal process provided under section (10) of this rule.

(6) Final Fitness Determination

(a) An authorized designee shall make a fitness determination about a subject individual based on information provided by the subject individual under section (3)(a) of this rule, the criminal records check(s) conducted, if any, and any false statements made by the subject individual.

(b) In making a fitness determination about a subject individual, an authorized designee shall consider the factors in subsections (A)–(F) below in relation to information provided by the subject individual under section (3)(a) of this rule, any LEDS report or criminal offender information obtained through a criminal records check, and any false statement made by the subject individual. To assist in considering these factors, the authorized designee may obtain other criminal records information from the subject individual or any other source, including law enforcement agencies, courts within or outside of Oregon and private contractors. To acquire other criminal offender information from the subject individual, an authorized designee may request to meet with the subject individual, to receive writ-

ten materials from him or her, or both. The authorized designee will use all collected information in considering:

(A) Whether the subject individual has been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in section (7) of this rule;

(B) The nature of any crime identified under subsection (b)(A) of this section;

(C) The facts that support the conviction, finding of guilty except for insanity, or pending indictment;

(D) The facts that indicate the subject individual made a false statement;

(E) The relevance, if any, of a crime identified under subsection (b)(A) of this section or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(F) The following intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made:

(i) The passage of time since the commission or alleged commission of a crime identified under subsection (b)(A) of this section;

(ii) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (b)(A) of this section;

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

(iv) The subsequent commission of another crime listed under section (7) of this rule;

(v) Whether a conviction identified under subsection (b)(A) of this section has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon;

(vi) A recommendation of an employer;

(vii) The disposition of a pending indictment identified under subsection (b)(A) of this section;

(viii) Whether the subject individual has been arrested for or charged with a crime listed under section (7) of this rule within the last five years;

(ix) Whether the subject individual is being investigated, or has an outstanding warrant, for a crime listed under section (7) of this rule;

(x) Whether the subject individual is currently on probation, parole or another form of post-prison supervision for a crime listed under section (7) of this rule;

(xi) Whether the subject individual has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under section (7) of this rule;

(xii) Whether the subject individual has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed under section (7) of this rule if committed by an adult;

(xiii) Periods of incarceration of the subject individual;

(xiv) Whether the subject individual has a history of drug or alcohol abuse which relates to his or her criminal activity and the subject individual's history of treatment or rehabilitation for such abuse; and

(xv) The education and work history (paid or volunteer) of the subject individual since the commission or alleged commission of a crime.

(c) Possible Outcomes of a Final Fitness Determination.

(A) Automatic Approval. An authorized designee shall approve a subject individual if the information described in subsections (a) and (b) of this section shows:

(i) No credible evidence that the subject individual has been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed under section (7) of this rule;

(ii) No credible evidence that the subject individual has a pending indictment for a crime listed under section (7) of this rule;

(iii) No credible evidence of the subject individual having made a false statement; and

(iv) No discrepancies between the criminal offender information, other criminal records information and information obtained from the subject individual.

(B) Evaluative Approval. If a fitness determination under this rule shows credible evidence of any of the factors identified in subsections (c)(A)(i)–(iv) of this section, an authorized designee may approve the subject individual only if, in evaluating the information described in subsections (a) and (b) of this section, the authorized designee determines that the subject individual acting in the position for which the fitness determination is being conducted would not pose a risk of harm to the OST, its client entities, the State, or members of the public.

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(C) Restricted Approval.

(i) If an authorized designee approves a subject individual under subsection (c)(B) of this section, the authorized designee may restrict the approval to specific activities or locations.

(ii) An authorized designee shall complete a new criminal records check and fitness determination on the subject individual prior to removing a restriction.

(D) Denial.

(i) If a fitness determination under this rule shows credible evidence of any of the factors identified in subsections (c)(A)(i)–(iv) of this section and, after evaluating the information described in subsections (a) and (b) of this section, an authorized designee concludes that the subject individual acting in the position for which the fitness determination is being conducted would pose a risk of harm to the OST, its client entities, the State, or members of the public, the authorized designee shall deny the subject individual as not fit for the position.

(ii) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the authorized designee shall deny the subject individual as not fit without further assessment under the fitness determination process.

(iii) If a subject individual is denied as not fit, then the subject individual may not be employed by, appointed as a board member or provide services as a volunteer, contractor or vendor to the OST in a position covered by section (2)(n) of this rule.

(d) Final Order. A completed final fitness determination becomes a final order of the OST unless the affected subject individual appeals by requesting either a contested case hearing as provided by section (10) of this rule.

(7) Crimes Relevant to a Fitness Determination

(a) Permanent Review. Any felony conviction under Oregon law or the equivalent under the law of another jurisdiction or any federal crime requires a fitness determination be completed regardless of date of conviction.

(A) This includes any crime which is no longer codified in Oregon or another jurisdiction, but which is the substantial equivalent to any felony in Oregon's or any other jurisdiction's statutes as determined by the authorized designee.

(B) This includes a new crime, adopted by the Oregon Legislative Assembly or the legislative body of another jurisdiction following the most recent amendment of these rules, which is the substantial equivalent of any felony in Oregon's or any other jurisdiction's statutes as determined by the authorized designee.

(b) Ten-Year Review. Any misdemeanor in Oregon or the equivalent under the laws of any other jurisdiction requires that a fitness determination be completed if the date of conviction is within ten years of the date the Criminal Records Request Form was signed.

(A) This includes any crime which is no longer codified in Oregon or another jurisdiction, but which is the substantial equivalent to any misdemeanor in Oregon's or any other jurisdiction's statutes as determined by the authorized designee.

(B) This includes a new crime, adopted by the Oregon Legislative Assembly or the legislative body of another jurisdiction following the most recent amendment of these rules, which is the substantial equivalent of any misdemeanor in Oregon's or any other jurisdiction's statutes as determined by the authorized designee.

(c) Evaluation Based on Oregon Laws. An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

(d) Expunged Juvenile Record. Under no circumstances shall a subject individual be denied under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262 or the equivalent law of another jurisdiction.

(8) Incomplete Fitness Determination

(a) The OST will close a preliminary or final fitness determination as incomplete when:

(A) Circumstances change so that a person no longer meets the definition of a "subject individual" under section (2)(n) of this rule;

(B) the subject individual does not provide materials or information under section (3)(a) of this rule within the timeframes established under that rule;

(C) An authorized designee cannot locate or contact the subject individual;

(D) The subject individual fails or refuses to cooperate with an authorized designee's attempts to acquire other criminal records information under section (6)(b) of this rule; or

(E) The OST determines that the subject individual is not eligible or not qualified for the position (of employee, contractor, vendor, board member or volunteer) for a reason unrelated to the fitness determination process.

(b) A subject individual does not have a right to a contested case hearing under section (10) of this rule to challenge the closing of an incomplete fitness determination.

(9) Notice to Subject Individual of Fitness Determination

(a) An authorized designee shall provide written notice to a subject individual upon completion of a preliminary or final fitness determination, or upon the closing a fitness determination due to incompleteness. The notice shall state the disposition of the fitness determination as to whether the fitness determination is closed due to incompleteness, or if completed, the outcome of the authorized designee's fitness determination of the subject individual.

(A) The authorized designee shall record on the notice the date on which the fitness determination was either closed as incomplete or completed.

(B) If the notice pertains to a completed final fitness determination, it shall be accompanied by a separate notice addressing the subject individual's right to request a contested case hearing to appeal the OST's determination and containing the information required by OAR 137-003-0505.

(b) An authorized designee shall provide for hand delivery or first class mail delivery of the notice(s) as soon as possible after completion or closure of a fitness determination, but in no case later than 14 calendar days after the date of completion or closure, to the address provided by the subject individual on the OST Criminal Records Request Form, or to an updated address as provided in writing by the subject individual.

(10) Appealing a Fitness Determination

(a) This section sets forth a contested case hearing process by which a subject individual may appeal a completed final fitness determination made under section (6) of this rule that he or she is fit or not fit to hold a position with, or provide services to the OST as an employee, volunteer, contractor, board member or vendor.

(b) Process. A subject individual may appeal a fitness determination through a contested case proceeding, as established under Oregon's Administrative Procedures Act and the Attorney General's Uniform and Model Rules for Contested Case Proceedings.

(c) Proposed and Final Order

(A) Proposed Order. The administrative law judge will conduct a contested case hearing to review whether the fitness determination was arbitrary, contrary to rule or law, or taken for political reasons. Thereafter, the administrative law judge will prepare a proposed order containing findings of fact and conclusions of law.

(B) Exceptions to the Proposed Order. The proposed order will be delivered to the subject individual and the OST. The subject individual may make written exceptions to the proposed order and provide written argument in support of the exceptions, if delivered to OST within fifteen calendar days following the date of service of the proposed order. If the subject individual or the subject individual's legal counsel files timely written exceptions to the proposed order with the OST, the State Treasurer or the State Treasurer's designee shall consider the exceptions and serve a final order, or request a revised proposed order from the administrative law judge.

(C) OST Issuance of Final Order. The State Treasurer will consider the written exceptions and argument filed by the subject individual, if any, and issue the final order within a reasonable time frame thereafter. The State Treasurer may choose to accept, deny, or modify the proposed order in accordance with the applicable statutes and rules.

(D) Default. A completed final fitness determination made under section (6) of this rule shall constitute a final order without a hearing as provided under OAR 137-003-0672.

(d) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation or information provided by a private contractor.

(A) To challenge information identified in subsection (d) of this section, a subject individual may use any process made available by the providing agency, if any.

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(B) If the subject individual successfully challenges the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation, the subject individual may request that the OST conduct a new criminal records check and re-evaluate the original fitness determination made under section (6) of this rule by submitting a new OST Criminal Records Request Form.

(11) Recordkeeping and Confidentiality

(a) An authorized designee shall document a preliminary or final fitness determination, or the closing of a fitness determination due to incompleteness, in writing.

(b) Records Received from the Oregon Department of State Police.

(A) Records the OST receives from the Oregon Department of State Police resulting from a criminal records check, including but not limited to LEDS reports and state or federal criminal offender information originating with the Oregon Department of State Police or the Federal Bureau of Investigation, are confidential pursuant to ORS 181.534(15). To the extent allowed by law, OST may also retain information obtained from private contractors as confidential.

(B) Within the OST, only authorized designees shall have access to records the OST receives from any entity resulting from a criminal records check.

(C) An authorized designee shall have access to records received from any entity in response to a criminal records check only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records.

(D) Authorized designees shall maintain and disclose records received from any entity resulting from a criminal records check in accordance with applicable requirements and restrictions in ORS chapter 181 and other applicable federal and state laws, rules adopted by the Oregon Department of State Police pursuant thereto (see OAR chapter 257, division 15), these rules, and any written agreement between the OST and the any entity that performs criminal records checks on behalf of OST.

(E) If a fingerprint-based criminal records check was conducted with regard to a subject individual, the OST shall permit that subject individual to inspect his or her own state and federal criminal offender information, unless prohibited by federal law.

(F) If a subject individual with a right to inspect criminal offender information under subsection (E) requests, the OST shall provide the subject individual with a copy of the individual's own state and federal criminal offender information, unless prohibited by federal law.

(c) Other Records.

(A) The OST shall treat all records received or created under these rules that concern the criminal history of a subject individual, other than records covered under subsection (b) of this section, including OST Criminal Records Request Forms and fingerprint cards, as confidential pursuant to ORS 181.534(15) or as allowed by other law with respect to information obtained from a private contractor. Information received as a result of a criminal records check shall be secured in a file separate from the employee's official personnel file. Destruction of the information received as a result of a criminal records check shall be consistent with state or federal law.

(B) Within the OST, only authorized designees shall have access to the records identified under subsection (c)(A) of this section.

(C) An authorized designee shall have access to records identified under subsection

(c)(A) of this section only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records.

(D) A subject individual shall have access to records identified under subsection (c)(A) of this section pursuant to the terms of the Public Records Law, ORS 192.410 to 192.505.

(12) Authorized Designees

(a) Appointment

(A) The Oregon State Treasurer shall designate positions within the OST as including the responsibilities of an authorized designee.

(B) Appointment to one of the designated positions shall be contingent upon an individual being approved under the OST's criminal records check and fitness determination process.

(C) Appointments shall be made by the State Treasurer at his or her discretion.

(b) The State Treasurer and the Deputy State Treasurer may also serve as authorized designees, contingent on being approved under the OST's criminal records check and fitness determination process.

(c) Conflict of Interests. An authorized designee shall not participate in a fitness determination or review any information associated with a fitness determination for a subject individual if either of the following is true:

(A) The authorized designee is related to the subject individual; or

(B) The authorized designee has a financial or close personal relationship with the subject individual. If an authorized designee is uncertain of whether a relationship with a subject individual qualifies as a financial or close personal relationship under this subsection, the authorized designee shall consult with his or her supervisor prior to taking any action that would violate this rule if such a relationship were determined to exist.

(d) Termination of Authorized Designee Status.

(A) When an authorized designee's employment in a designated position ends, his or her status as an authorized designee is automatically terminated.

(B) An authorized designee shall immediately report to his or her supervisor if he or she is arrested for or charged with, is being investigated for, or has an outstanding warrant or pending indictment for a crime described in section (7) of this rule. Failure to make the required report is grounds for termination of the individual's appointment to a designated position within the OST, and thereby termination of his or her status as an authorized designee.

(13) Fees

(a) The OST may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Department by the Oregon Department of State Police, the Federal Bureau of Investigation, or a contractor conducting a criminal background check to obtain criminal offender information on the subject individual.

(b) The OST may not charge the fee to the subject individual on whom criminal offender information is sought if the subject individual is being considered for employment with OST or providing volunteer services to OST.

(c) The OST may charge a fee to the subject individual if he or she is a contractor or vendor and is undergoing a fitness determination in that capacity, or the OST may charge the fee to the subject individual's employer.

(d) The OST may charge a fee to a subject individual that has been appointed or is being considered for appointment to a board or commission by the State Treasurer.

Stat. Auth.: ORS 181.534, 184.340 & 184.365

Stats. Implemented: ORS 181.534(9)

Hist.: OST 1-2008, f. & cert. ef. 3-3-08

Oregon University System Chapter 580

Rule Caption: Implements guidelines permitting fingerprint-based criminal records checks for prospective OUS employees, contractors and volunteers.

Adm. Order No.: OSSHE 3-2008(Temp)

Filed with Sec. of State: 2-19-2008

Certified to be Effective: 2-19-08 thru 8-1-08

Notice Publication Date:

Rules Adopted: 580-023-0105, 580-023-0110, 580-023-0115, 580-023-0120, 580-023-0125, 580-023-0130, 580-023-0135, 580-023-0140, 580-023-0145, 580-023-0150

Rules Suspended: 580-023-0005, 580-023-0010, 580-023-0015, 580-023-0020, 580-023-0025, 580-023-0030, 580-023-0035, 580-023-0040, 580-023-0045, 580-023-0050, 580-023-0055, 580-023-0060, 580-023-0065

Subject: Authorizes the Chancellor's Office and OUS institutions to conduct fingerprint-based criminal records checks on subject individuals who seek to provide services as an employee, contractor, or volunteer that will be working or providing services in a capacity that is designated as a critical or security-sensitive position.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-023-0005

Purpose

The Oregon University System is committed to protecting the security, safety, and health of faculty, staff, students, and others, as well as safeguarding the assets and resources of OUS and each of its universities. To meet these objectives, the Board delegates to the Chancellor and president of each university electing to conduct criminal records checks responsibility

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ity for developing institutional policies governing the conduct of criminal records checks. Institutional policies must be consistent with this rule and applicable Oregon state laws and federal law.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 through 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06; Suspended by OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0010

Definitions

(1) "Criminal records check" means the process used by the Chancellor's Office and OUS institutions to conduct criminal records background checks on candidates to verify that candidate does not have any undisclosed criminal convictions or pending criminal charges and accurately states the disposition of criminal charges. A conviction includes a plea of no contest, plea of guilty, or any court determination of guilt. Criminal offender information will be obtained using computerized and/or fingerprint-based processes. Statewide criminal records checks will be performed by the Oregon State Police (OSP) using the Oregon Law Enforcement Data System. A nationwide criminal records check and/or a state-specific criminal records check may be obtained from the OSP through the Federal Bureau of Investigation (FBI).

(2) "Critical" or "Security-Sensitive Position" means and is limited to positions or contracts for services in which a person:

(a) Has direct access to persons under 18 years of age or to student residence facilities because the person's work duties require the person to be present in the residence facility;

(b) Is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(c) Has 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) Has access to property where chemicals, hazardous materials, and other items controlled by state or federal laws or regulations are located;

(e) Has access to laboratories, nuclear facilities or utility plants to which access is restricted in order to protect the health or safety of the public;

(f) Has fiscal, financial aid, payroll or purchasing responsibilities as one of the person's primary responsibilities; or

(g) Has access to personal information about employees or members of the public including Social Security Numbers, dates of birth, driver license numbers, medical information, personal financial information, or criminal background information.

(3) "Fingerprint-based criminal record check" means a criminal records check using subject individual's fingerprints. Fingerprint-based criminal record checks and criminal records checks may only be requested from the OSP for non-criminal justice purposes. If a nationwide criminal records check of a subject individual is necessary, the Chancellor's Office or OUS institutions may request that the OSP conduct the check, including fingerprint identification, through the FBI.

(4) "OUS institution" means an institution of higher education in the state of Oregon under the authority of the Oregon State Board of Higher Education.

(5) "Subject individual" means a person from whom the Chancellor's Office or OUS institutions may require criminal records checks as a condition to provide services as a contractor, vendor, employee, or volunteer. Subject individual includes persons currently serving as a contractor, vendor, employee, or volunteer who seek appointment as an employee, volunteer, or engagement as a contractor or vendor to a position that is designated as a critical or security-sensitive position.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06; Suspended by OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0015

Criminal Records Check Policy

(1) The Chancellor's Office and OUS institutions are authorized to conduct criminal records checks only on subject individuals who seek to provide services as an employee, contractor, vendor, or volunteer that will be working or providing services in a capacity that is designated as a critical or security-sensitive position.

(2) Criminal records checks may not be performed on employees who are involuntarily transferred to a new position, unless the position is designat-

ated as a critical or security-sensitive position and requires a determination of fitness based on criminal records check.

(3) A determination of fitness based on a criminal records check for critical or security-sensitive positions is considered a minimal qualification of the position.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06; Suspended by OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0020

Obtaining Criminal Offender Information

Any criminal records check policy instituted by the Chancellor's Office or OUS institution must be in consultation with the OSP and must be implemented through institution specific policies that include but need not be limited to:

(1) Specifying categories of subject individuals who are subject to criminal records checks.

(2) Specifying the information that may be required from a subject individual to permit a criminal record check.

(3) Specifying which programs or services are subject to the checks.

(4) Specifying the types of crimes that may be considered in reviewing criminal offender information of the subject individual.

(5) Specifying when a nationwide fingerprint-based criminal records check must be conducted. If a nationwide fingerprint-based criminal records check is to be required, the Chancellor's Office or OUS institution must take into consideration the additional cost associated with the check.

(6) Establish fees, if any, in an amount not to exceed the actual cost of acquiring and furnishing criminal records. An established fee may be waived by an appropriately designated official of the employer.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06; Suspended by OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0025

Criminal Records Check Notice to Applicants

Application forms and solicitations for contract and vendor services must give notice to any prospective employee, contractor, vendor, or volunteer if the position requires a fingerprint-based criminal record check or criminal records check.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06; Suspended by OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0030

Confidentiality of Criminal Records Checks

Any information obtained in the criminal records check is confidential. The Chancellor's Office and OUS institutions in adopting policies must restrict dissemination of information obtained in the criminal records check. Only those persons, as identified by the Chancellor's Office or OUS institutions, with a demonstrated and legitimate need to know the information may have access to criminal records check records.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06; Suspended by OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0035

Subject Individual's Access to Criminal Offender Records

The Chancellor's Office and OUS institutions must permit a subject individual for whom a criminal records check was conducted to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06; Suspended by OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0040

Pre-employment Status

The Chancellor's Office and OUS institutions must establish policies that specify when and under what conditions a subject individual will be hired, promoted, transferred, participate in training or orientation or engage in activities required of a critical or security-sensitive position or contract pending results of a criminal records check. These policies shall be clearly communicated as part of the Criminal Records Check Notice to Applicants pursuant to OAR 580-023-0025.

Stat. Auth.: ORS 181.534 & 352.012

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Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06; Suspended by OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0045

False Statements or Refusal to Consent to Criminal Records Check

(1) The Chancellor's Office and OUS institutions must determine whether a subject individual is fit to hold a position, provide services, or be employed if the criminal records check evidences that the applicant made a false statement regarding the background information provided.

(2) If a subject individual refuses to consent to a criminal records check or refuses to be fingerprinted, the Chancellor's Office or OUS institution shall deny the employment of the individual, or deny any applicable position, or deny any request to provide volunteer services, or deny authority to provide contracted services.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06; Suspended by OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0050

Fitness to Hold Position Based on Criminal Records Check

The Chancellor's Office and OUS institutions must use these rules and resulting policies to determine whether the subject individual is fit to hold a position, provide a service, or be employed based upon the criminal records check obtained, or on any false statement made regarding criminal history. In making the fitness determination, the Chancellor's Office or OUS institution must consider:

- (1) The nature of the crime;
- (2) The facts that support the conviction or pending indictment or that indicate the making of the false statement;
- (3) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's proposed position, services, or employment; and
- (4) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, or employment. Intervening circumstances include but are not limited to:
 - (a) The passage of time since the commission of the crime;
 - (b) The age of the subject individual at the time of the crime;
 - (c) The likelihood of a repetition of offenses or of the commission of another crime;
 - (d) The subsequent commission of another relevant crime;
 - (e) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(f) A recommendation of an employer.
Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06; Suspended by OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0055

Contested Case Process for Criminal Records Check

The Chancellor's Office and OUS institutions must establish a contested case process pursuant to ORS Chapter 183 by which a subject individual may appeal the determination that the individual is not fit to hold a position, provide services, or be employed on the basis of information obtained as a result of a criminal records check. Challenges to the accuracy or completeness of information provided by the OSP, the FBI, and agencies reporting information to the OSP or FBI must be made through the OSP, FBI, or reporting agency and not through the contested case process. Subject individuals may provide information that is contrary to that contained in the records received.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06; Suspended by OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0060

Notice of Adverse Fitness Determination Based on Criminal Records Check

The Chancellor's Office or OUS institutions shall inform the subject individual who has been determined not to be fit, via certified mail, of such disqualification. The notice will indicate that the subject individual:

(1) Has a right to inspect and challenge their Oregon criminal offender information in accordance with the OSP procedures as adopted per ORS 181.555(3) and 257-010-0035;

(2) May challenge the accuracy or completeness of any entry on the subject individual's criminal records obtained from the FBI by filing a chal-

lenge with the FBI in accordance with Title 28 Code of Federal Regulations Part 16.34 (28 CFR 16.34) or the then current regulation; and

(3) May appeal the determination of fitness through the process described in this rule.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06; Suspended by OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0065

Challenging a 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.

(1) The subject individual must notify the Chancellor's Office or OUS institution in writing of his/her intent to challenge the fitness determination and to request a contested case hearing not later than 14 calendar days from the date of the denial notice. The Chancellor's Office or OUS institution may extend the time to appeal if the Chancellor's Office or OUS institution determines the delay was caused by factors beyond the reasonable control of the subject individual.

(2) The Chancellor's Office and OUS institution has no jurisdiction over allegations that the criminal offender information received from OSP, the FBI, or other entities is inaccurate, incomplete, or maintained in violation of any federal or state law.

(3) The Chancellor's Office and OUS institution is entitled to rely on the criminal offender information supplied by OSP, the FBI, or other entities until the Chancellor's Office or OUS institution is notified that the information has been changed or corrected.

(4) Any contested case hearing under this rule is not open to the public.

(5) The issues at a contested case hearing shall be limited to whether the Chancellor's Office or OUS institution considered the relationship of the facts that support the conviction and all intervening circumstances to the position at issue in determining the fitness of the subject individual to hold the position, provide a service or be employed.

(6) The Chancellor or president of the university shall select an appropriate hearing officer. The role of the hearing officer is limited to conducting the hearing and developing a proposed order for the Chancellor or president or his/her designee.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06; Suspended by OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0105

Purpose

(1) The Oregon University System is committed to protecting the security, safety, and health of faculty, staff, students, and others as well as safeguarding the assets and resources of OUS and each of its universities. To meet these objectives, the Board delegates to the Chancellor and president of each university electing to conduct criminal records checks responsibility for adopting rules governing the conduct of criminal records checks.

(2) Any rules adopted under subsection (1) must be consistent with OAR Ch. 580, division 023, applicable Oregon state laws, and federal law.

Stat. Auth.: ORS 181.534, ORS 352.012
Stats. Implemented: ORS 181.534, ORS 352.012
Hist.: OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0110

Definitions

(1) "Criminal records check" means a fingerprint-based criminal records check.

(2) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilt, a plea of guilty, a plea of nolo contendere (no contest), or any determination of guilt.

(3) "Fingerprint-based criminal records check" means a criminal records check using a subject individual's fingerprints. Fingerprint-based criminal record records checks may only be requested from the Oregon State Police for non-criminal justice purposes. If a nationwide criminal records check of a subject individual is necessary, the Chancellor's Office or OUS institutions may request that the Oregon State Police conduct the check, including fingerprint identification, through the Federal Bureau of Investigation.

(4) "OUS institution" means an institution of higher education in the state of Oregon under the authority of the Oregon State Board of Higher Education.

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(5) "Subject individual" means a person from whom the Chancellor's Office or OUS institution may require criminal records checks as a condition to provide services as a contractor, employee, or volunteer. Subject individuals include persons currently serving as a contractor, employee, or volunteer, or persons who seek appointment as an employee, volunteer, or engagement as a contractor to a position that is designated as a critical or security-sensitive position. The categories of critical or security-sensitive positions for which the Chancellor's Office and OUS institutions may conduct criminal records checks include those in which the person:

(a) Has direct access to persons under 18 years of age or to student residence facilities because the person's work duties require the person to be present in the residence facility;

(b) Is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(c) Has 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) Has access to property where chemicals, hazardous materials and other items controlled by state or federal laws or regulations are located;

(e) Has access to laboratories, nuclear facilities or utility plants to which access is restricted in order to protect the health or safety of the public;

(f) Has fiscal, financial aid, payroll or purchasing responsibilities as one of the person's primary responsibilities; or

(g) Has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal background information.

Stat. Auth.: ORS 181.534, ORS 352.012

Stats. Implemented: ORS 181.534, ORS 352.012

Hist.: OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0115

Criminal Records Check Process

(1) The Chancellor's Office or an OUS institution may require the subject individual to complete a criminal records request form and provide any additional information necessary to complete the criminal records check in a reasonable period of time.

(2) The Chancellor's Office of an OUS institution may conduct, or request that the Oregon State Police conduct, a criminal records check, when:

(a) an individual meets the definition of "subject individual"; or

(b) required by federal law or regulation, by state law or administrative rule, or by contract or written agreement.

(3) A determination of fitness based on a criminal records check for critical or security-sensitive positions is considered a minimum qualification of the position. The fact that a subject individual may be approved as fit on the basis of a criminal records check does not guarantee the individual a position as an employee, contractor, or vendor.

Stat. Auth.: ORS 181.534, ORS 352.012

Stats. Implemented: ORS 181.534, ORS 352.012

Hist.: OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0120

Criminal Records Check Notice to Applicants

Application forms and solicitations for contract services must give notice to any prospective employee, contractor, or volunteer if the position requires a criminal records check as defined by these rules.

Stat. Auth.: ORS 181.534, ORS 352.012

Stats. Implemented: ORS 181.534, ORS 352.012

Hist.: OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0125

Confidentiality of Criminal Records Checks

Any information obtained in the criminal records check is confidential. The Chancellor's Office or OUS institutions must restrict the dissemination of information obtained in the criminal records check. Only those persons, as identified by the Chancellor's Office or OUS institution, with a demonstrated and legitimate need to know the information, may have access to criminal records check records.

Stat. Auth.: ORS 181.534, ORS 352.012

Stats. Implemented: ORS 181.534, ORS 352.012

Hist.: OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0130

Refusal to Consent to Criminal Records Check and Incomplete Fitness Determination

(1) The Chancellor's Office and OUS institutions will close a fitness determination as incomplete when:

(a) circumstances change so that a person no longer meets the definition of a "subject individual";

(b) the subject individual does not provide materials or information under OAR 580-023-0115(1);

(c) the Chancellor's Office or OUS institution cannot locate or contact the subject individual;

(d) the Chancellor's Office or the OUS institution determine that the subject individual is not eligible or not qualified for the position of employee, contractor, or volunteer for a reason unrelated to the fitness determination process; or

(e) the position is no longer open.

(2) A subject individual does not have the right to a hearing under OAR 580-023-0165 to challenge the closing of an incomplete fitness determination.

(3) If a subject individual refuses to consent to a criminal records check, the Chancellor's Office or OUS institution shall deny the employment of the individual, or deny any applicable position, or deny any request to provide volunteer services, or deny authority to provide contracted services. A subject individual may not appeal any determination made on the basis of a refusal to consent.

Stat. Auth.: ORS 181.534, ORS 352.012

Stats. Implemented: ORS 181.534, ORS 352.012

Hist.: OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0135

Fitness to Hold Position Based on Criminal Records Check

(1) The Chancellor's Office and OUS institutions must use these rules, and any rules adopted at the institutional level, to determine whether the subject individual is fit to hold a position, provide a service, or be employed based on the criminal records check obtained, including any additional information provided under OAR 580-023-0115(1), and on any false statement made regarding the subject individual's criminal history. In making the fitness determination, the Chancellor's Office or OUS institution must consider:

(a) the nature of the crime;

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

(c) the relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's proposed position, services or employment; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, or employment. Intervening circumstances include, but are not limited to:

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

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

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime;

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

(F) A recommendation of an employer.

(2) Crimes Relevant to a Fitness Determination

(a) All felonies;

(b) All Class A misdemeanors;

(c) Any United States Military crime or international crime;

(d) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this subsection (2) pursuant to ORS 161.405, 161.435, or 161.450; and

(e) Any crime based on criminal liability for conduct of another pursuant to ORS 161.155, when the underlying crime is listed in this subsection (2).

(3) Evaluation Based on Oregon and Other Laws. An authorized designee shall evaluate a crime on the basis of Oregon laws and, if applicable, federal laws or the laws of any other jurisdiction in which a criminal records check indicates a subject individual may have committed a crime, as those laws are in effect at the time of the fitness determination.

(4) Notwithstanding subsections (2) and (3) of this rule or OAR 580-023-0100(2), an OUS institution may adopt rules setting forth which crimes will be considered relevant to a fitness determination.

Stat. Auth.: ORS 181.534, ORS 352.012

Stats. Implemented: ORS 181.534, ORS 352.012

Hist.: OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

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580-023-0140

Notice of Adverse Fitness Determination Based on Criminal Records Check

The Chancellor's Office or OUS institution shall inform the subject individual who has been determined not to be fit on the basis of a criminal records check, via certified mail to the most current address provided by the subject individual, of such disqualification.

Stat. Auth.: ORS 181.534, ORS 352.012

Stats. Implemented: ORS 181.534, ORS 352.012

Hist.: OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0145

Challenging a Fitness Determination

If a subject individual wishes to dispute an adverse fitness determination, the subject individual may appeal the determination by requesting a hearing.

(1) The subject individual may appeal a final fitness determination made on the basis of a criminal records check by submitting a written request for a hearing to the address specified in the notice provided under OAR 580-023-0160 within fourteen (14) calendar days of the date in the notice. The Chancellor's Office or OUS institution may extend the time to appeal if the Chancellor's Office of OUS institution determines the delay was caused by factors beyond the reasonable control of the subject individual.

(2) Challenging Criminal Offender Information. A subject individual may not use the hearing process established by this rule to challenge the accuracy, completeness or lawfulness of information provided by the Oregon State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon State Police or the Federal Bureau of Investigation.

(3) The Chancellor's Office or OUS institution is entitled to rely on the criminal offender information supplied by the Oregon State Police, the Federal Bureau of Investigation or other entities until the Chancellor's Office or OUS institution is notified that the information has been changed or corrected.

(4) Any hearing under this rule is not open to the public.

(5) Remedy. The only remedy that may be awarded under this hearing process is a determination that the subject individual is fit. Under no circumstance shall the Chancellor's Office or OUS institution be required to place a subject individual in any position, nor shall the Chancellor's Office or OUS institution be required to accept services or enter into a contractual agreement with a subject individual.

(6) Hearing Process. Upon receiving valid notice under subsection (1) of this rule, the Chancellor or president of the university shall select an appropriate hearing officer. The role of the hearing officer is limited to conducting the hearing and developing a proposed order for the Chancellor or president or his/her designee.

(a) Prehearing Conferences. Prior to the hearing, the hearing officer may, in its discretion, conduct one or more prehearing conferences to facilitate the conduct of and resolution of the case. The hearing officer may convene the conference on its own initiative or at a party's request.

(b) The purposes of a prehearing conference may include, but are not limited to the following:

(A) To facilitate discovery and to resolve disagreements about discovery;

(B) To identify, simplify, and clarify issues;

(C) To eliminate irrelevant issues;

(D) To obtain stipulations of fact;

(E) To provide the hearing officer and parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;

(F) To authenticate documents;

(G) To decide the order of proof and other procedural matters pertaining to the conduct of the hearing;

(H) To discuss settlement or other resolution or partial resolution of the case.

(c) Conducting the Hearing. The hearing shall be conducted, subject to the discretion of the hearing officer, so as to include the following:

(A) The statement and evidence of the Chancellor's Office or OUS institution to support its action;

(B) The statement and evidence of the subject individual determined to be unfit to support its position;

(C) Any rebuttal evidence; and

(D) Any closing arguments.

(d) The hearing officer shall have the authority to question witnesses and set reasonable time limits for oral presentation. The hearing officer may exclude cumulative, repetitious, or immaterial matter.

(e) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

(f) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, and privileges afforded by Oregon law shall be recognized by the hearing officer.

(g) The hearing officer shall draft a proposed order for the consideration of the Chancellor or institution president, to include the following:

(A) Findings of fact;

(B) Conclusions of law;

(C) Order.

(h) Within twenty-one (21) calendar days of receiving the proposed order from the hearing officer, the Chancellor or institution president must:

(A) Adopt the proposed order as the final order for the case; or

(B) Amend the proposed order as the final order for the case.

(i) The final order from the Chancellor or institution president is final. The final order shall be delivered to the subject individual in writing, via certified mail.

(j) Notwithstanding OAR 580-023-0165, an OUS institution may adopt rules outlining the hearing process required to challenge a fitness determination.

(7) Appealing a fitness determination under section (1) of this rule, or challenging criminal offender information with the agency that provided the information, will not delay or postpone the Chancellor's Office or OUS institution's hiring process or employment decisions.

Stat. Auth.: ORS 181.534, ORS 352.012

Stats. Implemented: ORS 181.534, ORS 352.012

Hist.: OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

580-023-0150

Fees

The Chancellor's Office or OUS institution may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged the Chancellor's Office or OUS institution by the Oregon State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

Stat. Auth.: ORS 181.534, ORS 352.012

Stats. Implemented: ORS 181.534, ORS 352.012

Hist.: OSSHE 3-2008(Temp), f. & cert. ef. 2-19-08 thru 8-1-08

Rule Caption: To establish delegation of authority pertaining to gifts, grants, and contracting.

Adm. Order No.: OSSHE 4-2008(Temp)

Filed with Sec. of State: 2-19-2008

Certified to be Effective: 2-19-08 thru 8-16-08

Notice Publication Date:

Rules Amended: 580-042-0010

Subject: The Oregon University System has adopted new temporary administrative rules for purchase of real property and improvements (Divisions 60 and 63). Under these new rules, institutional delegated authority has been modified. Modification of this rule is necessary to avoid conflicting levels of delegation.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-042-0010

Delegation

(1) Institutions are authorized to apply for and accept, on behalf of the Board, gifts or grants and to negotiate contracts that will not result in:

(a) Enrollments in excess of those on which budgets have been based;

(b) Commitment of funds beyond those available in budgets approved by the Board, or the normal continuation thereof;

(c) Creating a commitment for the institution or the state to continue support of a program funded through gifts, grants or contracts, in the event such funds are discontinued;

(d) Development or support of activities inconsistent with the approved mission of the department and/or institution;

(e) Launching of new curricular programs that have not received prior Board approval;

(2) The Vice Chancellor for Finance and Administration or a designee is authorized to approve applications for and acceptance of other gifts, grants or contracts.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

ADMINISTRATIVE RULES

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 2-1986, f. & ef. 1-17-86; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 4-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

Rule Caption: Rules for procurement, contracting, construction, purchase and sale of real property.

Adm. Order No.: OSSHE 5-2008(Temp)

Filed with Sec. of State: 2-19-2008

Certified to be Effective: 2-19-08 thru 8-16-08

Notice Publication Date:

Rules Adopted: 580-060-0000, 580-060-0005, 580-060-0010, 580-060-0015, 580-060-0020, 580-060-0025, 580-060-0030, 580-060-0035, 580-060-0040, 580-060-0045, 580-060-0050, 580-060-0055, 580-060-0060, 580-061-0000, 580-061-0005, 580-061-0010, 580-061-0015, 580-061-0020, 580-061-0025, 580-061-0030, 580-061-0035, 580-061-0040, 580-061-0045, 580-061-0050, 580-061-0055, 580-061-0060, 580-061-0065, 580-061-0070, 580-061-0075, 580-061-0080, 580-061-0085, 580-061-0090, 580-061-0095, 580-061-0100, 580-061-0105, 580-061-0110, 580-061-0115, 580-061-0120, 580-061-0125, 580-061-0130, 580-061-0135, 580-061-0140, 580-061-0145, 580-061-0150, 580-061-0155, 580-061-0160, 580-062-0000, 580-062-0005, 580-062-0010, 580-062-0015, 580-062-0020, 580-063-0000, 580-063-0005, 580-063-0010, 580-063-0015, 580-063-0020, 580-063-0025, 580-063-0030, 580-063-0035, 580-063-0040, 580-063-0045

Rules Suspended: 580-040-0100, 580-040-0200, 580-040-0205, 580-040-0210, 580-040-0215, 580-040-0220, 580-040-0223, 580-040-0225, 580-040-0230, 580-040-0235, 580-040-0240, 580-040-0245, 580-040-0255, 580-040-0260, 580-040-0275, 580-040-0277, 580-040-0280, 580-040-0285, 580-040-0290, 580-040-0292, 580-040-0295, 580-050-0001, 580-050-0005, 580-050-0010, 580-050-0015, 580-050-0020, 580-050-0025, 580-050-0032, 580-050-0033, 580-050-0040, 580-050-0041, 580-050-0042, 580-050-0100, 580-050-0105

Subject: The administrative rules governing procurements of professional services, goods and services, construction services, purchase and sale of real property, and use of university property.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-040-0100

Screening and Selection for Personal Services Contracts

(1) The Department of Higher Education periodically requires the services of an individual or firm to perform personal or professional services. These rules set forth the screening and selection process to be used for all such contracts, except where a University System institution has adopted its own screening and selection rules, and except for contracts covered by OAR 580-050-0020 (Architectural and Engineering Services).

(2) The Department of Higher Education will contract for personal or professional services when the specialized skills, knowledge and resources are not available within the Department; when the work cannot be done in a reasonable time with the Department's own workforce; when an independent and impartial evaluation of a situation is required by a contractor with recognized professional expertise and stature in a field; when it will be less expensive to contract for the work; or when grants require subcontracting.

(3) For the purposes of this rule, the term:

(a) "Director" means the Director of Legal Services of the Department of Higher Education, or designee;

(b) "Department" means the Department of Higher Education on its own behalf or acting on behalf of a University System institution;

(c) "University System Institution" means a college and university that is a part of the Oregon University System;

(d) "Contractor" means an individual or firm selected to perform personal or professional services for the Department of Higher Education and with whom the Department may contract;

(e) "Personal Services Contract" means a contract for personal or professional services performed by an independent contractor.

(f) "AOUS" means the Chancellor's Office and the institutions of the Oregon University System.

(4) Formal Selection Procedure: This procedure will be used whenever the estimated payment to the contractor exceeds \$25,000. Exceptions to this procedure are specified in sections (5), (6), (7) and (8). The amount

of the contract may not be manipulated to avoid the need for informal or formal procedures.

(a) Announcement: The Department will give notice of intent to contract for personal services in a trade periodical or newspaper of general circulation. The notice shall include a description of the proposed project, the scope of the services required, project completion dates and a description of special requirements, if any. The notice will invite qualified prospective contractors to apply. The notice will specify when and where the application may be obtained, to whom it must be returned, and the closing date. The Department will provide notices to the Office of Minority, Women and Emerging Small Business.

(b) Application: The application will consist of a statement that describes the prospective contractor's credentials, performance data and other information sufficient to establish contractor's qualification for the project, as well as any other information requested in the announcement.

(c) Initial Screening: The Director will evaluate the qualifications of all applicants and select a prospective contractor whose application demonstrates that the contractor best fulfills the provisions of paragraph (d)(B) of this section.

(d) The Final Selection Procedure:

(A) Interviews: The Director will interview, through any appropriate medium, the finalists selected from the initial screening.

(B) Award of Contracts: The Director will make the final selection based on applicant capability, experience, project approach, compensation requirements, and references.

(5) Informal Selection Procedure: This procedure may be used when the estimated payment for the proposed services to be performed by the contractor does not exceed \$25,000, or, at the Director's discretion, when the informal selection procedure will not interfere with competition among prospective contractors or reduce the quality of services or increase costs. Selection: The Department will contact a minimum of three prospective contractors known to the Department to be qualified to offer the sought-after services. An estimated fee will be requested, and the selection will be made by the Director based upon the factors described in paragraph (4)(d)(B) of this rule. If three quotes are not received, the Department will make a written record of its efforts to obtain quotes.

(6) Personal Services Contracts not exceeding \$5,000: The Department may enter into Personal Services Contracts not exceeding \$5,000 without following the procedures identified elsewhere in this rule. However, the Department will make reasonable effort to choose the most qualified contractor. The amount of the contract is not to be manipulated to avoid the need for informal or formal procedures.

(7) Department may negotiate with a single source if the services are available only from one contractor, or the prospective contractor has special skills uniquely required for the adequate performance of the services;

(8) Emergency Appointment Procedure: The Director may select a contractor without following any of the above procedures when conditions require prompt action to protect life or property. In such instance, the recommended appointment and a written description of the conditions requiring the use of this appointment procedure shall be submitted to the Director. The Director will determine if an emergency exists, declare the emergency, and, when appropriate, approve the appointment.

(9) The Department will maintain a file with the office of the Director of Legal Services, on the selection process for all Personal Services Contracts entered on behalf of Department that will include:

(a) The method and copy of announcement;

(b) The names of firms/individuals and cost estimates considered;

(c) A justification of need for the contract;

(d) The basis for selection;

(e) Rationale by which rates were established;

(f) How reasonableness of price was determined;

(g) A copy of the resulting contract and any subsequent amendments.

(10) University System institutions using this rule will maintain a file on the selection process for all Personal Services Contracts entered on behalf of the institution and notify Director of location of the files required in this section. Such files will contain:

(a) The method and copy of announcement;

(b) The names of firms/individuals and cost estimates considered;

(c) A justification of need for the contract;

(d) The basis for selection;

(e) Rationale by which rates were established;

(f) How reasonableness of price was determined;

(g) A copy of the resulting contract and any subsequent amendments.

Stat. Auth.: ORS 279.051 & 351

Stats. Implemented: ORS 351.070

ADMINISTRATIVE RULES

Hist.: HEB 3-1993, f. & cert. ef. 3-5-93; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0200

Purpose

The purpose of the rules outlined in Oregon Administrative Rules chapter 580, division 40, rules 580-040-0200 through 580-040-0295, is to:

- (1) Establish competitive procedures that are flexible enough to allow campuses to purchase and contract in a way that most suits their institutional organization;
- (2) Reduce prior approvals and ensure accountability through auditing;
- (3) Generate and retain only necessary documentation;
- (4) Develop procedures that will allow campuses to use the most appropriate procurement methods and encourage innovation;
- (5) Allow campuses to work cooperatively with each other and other governmental units; and
- (6) Allow institutions to do business more easily with local and regional vendors.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0205

Code of Ethics

(1) The following Code of Ethics shall act as a guideline for employees to follow in contracting and purchasing.

- (a) Give first consideration to the objectives and policies of OUS and the institution.
- (b) Strive to obtain the maximum value for expenditures.
- (c) Grant all competitive suppliers equal consideration insofar as state or federal statutes and institutional policies permit.
- (d) Conduct business with potential and current suppliers in an atmosphere of good faith, devoid of intentional misrepresentation.
- (e) Demand honesty in sales representation whether offered through the medium of an oral or written statement, an advertisement, or a sample of the product.
- (f) Encourage all segments of society to participate by demonstrating support for emerging small, disadvantaged, and minority-owned and women-owned businesses and Qualified Rehabilitation Facilities.
- (g) Consistent with the provisions of ORS 244, decline personal gifts or gratuities from any current or potential supplier of goods or services to OUS or its institutions.
- (h) Refrain from knowingly engaging in any outside matters of financial interest incompatible with the impartial, objective, and effective performance of duties. Activities that may create a conflict of interest must be addressed in accordance with the procedures outlined in OUS's Internal Management Directives.

(i) Receive written consent of originator of proprietary ideas and designs before using them for competitive purchasing purposes.

(j) Foster fair, ethical, and legal trade practices.

(2) The Code is for use only by OUS and its institutions and creates no enforceable obligations for contractors, proposers, bidders or other parties doing business with OUS nor may it be used by contractors, proposers, bidders or other parties doing business with OUS who are challenging actions taken by OUS, its institutions, officers, employees, or agents.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0210

Delegation of Authority

(1) Institutions of OUS may follow the procedures in OAR 580-040-0223 to 580-040-0295 or may develop and promulgate their own procedures by Administrative Rule for purchasing and contracting provided that such procedures ensure competitive practices. Procedures developed by the campuses must be approved by the OUS Vice Chancellor for Finance and Administration prior to adoption.

(2) Notwithstanding section (1) of this rule, institutions shall be subject to:

- (a) OAR 580-040-0223;
- (b) OAR 580-040-0228;
- (c) OAR 580-040-0290;
- (d) OAR 580-040-0292; and

(e) OAR 580-040-0295.

(3) For those institutions following OAR 580-040-0223 to 580-040-0295, the Oregon State Board of Higher Education delegates authority to each OUS president to develop guidelines and oversee practices regarding the purchasing and procurement of, and contracting for, goods and services including information technology and telecommunications at each respective campus consistent with these rules.

(4) OAR 580-040-0223 to 580-040-0295 provide procedures to be used for purchasing and contracting except for:

(a) Contracts covered under the following Oregon Administrative Rules:

(A) OAR 580-040-0100 — Screening and Selection for Personal Services Contracts; or

(B) OAR 580-050-0032 to 580-050-0042 — Facilities contracting; or

(b) Where an OUS institution has adopted its own rules, consistent with OAR 580-040-0223 to 580-040-0295, to cover purchasing and contracting.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0215

Definitions

The following definitions shall apply to all Oregon Administrative Rules contained in this division unless the context requires otherwise:

(1) "Bid": A competitive offer, which is binding on the bidder, in which price, delivery (or project completion) and conformance with specifications and the requirements of the Invitation to Bid or other competitive bidding method will be the predominant award criteria.

(2) "Bidder": A person or entity offering to supply goods or services to OUS or any of its institutions in response to an Invitation to Bid or other competitive bidding method.

(3) "Closing": The date and time announced in the solicitation (e.g., Invitation to Bid or Request for Proposals) as the deadline for submitting bids or proposals.

(4) "Competitive Process": The process of procuring goods and services by fair and open competition, under varying market conditions, with the intent of minimizing opportunities for favoritism and assuring that contracts are awarded equitably and economically using various factors in determining such equitability and economy.

(5) "Competitive Quotes": The solicitation of offers from competing bidders. The solicitation may be accomplished by advertisement and/or by OUS or any of its institutions initiating a request to vendors to make an offer. The solicitation and the offer may be in writing or oral.

(6) "Contract": The written agreement, including OUS's or any of its institution's solicitation document and the accepted portions of a bid or proposal, between OUS or any of its institutions and the contractor describing the work to be done and the obligations of the parties. Depending upon the goods and services being procured, OUS or any of its institutions may use "contract" as meaning a purchase order, price agreement, or other contract document in addition to OUS's or any of its institution's solicitation document and the accepted portions of a bid or proposal.

(7) "Contract Price": The total of the awarded bid or proposal amount, including any approved alternates, and any fully executed change orders or amendments.

(8) "Contractor": The individual, firm, corporation or entity awarded the contract to furnish OUS or any of its institutions the goods, services, or work procured through a competitive process.

(9) "Days": Calendar days, including weekdays, weekends and holidays, unless otherwise specified.

(10) "Electronic Data Interchange (EDI)": The movement of electronic information from computer to computer. The electronic transfer of standard business transaction information between organizations in a structured application.

(11) "Emergency": Not reasonably foreseeable circumstances that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that requires prompt execution of a contract to remedy the condition.

(12) "Emerging Small Business (ESB)": The meaning given in ORS 200.005(3) and (4).

(13) "Facsimile": Electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a document (e.g., facsimile bid), the term refers to a document (in the example given, a bid) that has been transmitted to and received by OUS or any of its institutions via facsimile.

ADMINISTRATIVE RULES

(14) "Invitation to Bid": The solicitation of competitive, written, signed, and sealed bids in which specification, price and delivery (or project completion) are the predominant award criteria.

(15) "Minority Business Enterprise (MBE)": The meaning given in OAR 125-030-0000.

(16) "Opening": The date, time, and place announced in a solicitation for the public opening of written, sealed bids or proposals.

(17) "OUS": Oregon University System — Based on context can refer to either the University System administrative offices, and/or the institutions of the Oregon University System.

(18) "Price Agreement": A nonexclusive agreement in which the contractor agrees to provide specific items or services to OUS or an institution at a set price during a specified period of time.

(19) "Proposal": A competitive offer, binding on the proposer and submitted in response to a Request for Proposals, where proposal evaluation and contract award are based on criteria such as proposer qualifications and experience, product features and characteristics, service quality and efficiency and conformance with the specifications and requirements of the solicitation. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award.

(20) "Proposer": A person or entity who submits a proposal in response to a Request for Proposals.

(21) "Qualified Vendor Listing": A list of vendors identified from a Request for Qualifications or Request for Information who are able to provide specific goods or services. Vendors on the list are not, however, under contract to provide those goods or services.

(22) "Request for Information (RFI)": A written document soliciting information regarding products or services that OUS or an institution is interested in procuring. An RFI should describe the purpose of the procurement and the method to be used in evaluating the responses received.

(23) "Request for Proposal (RFP)": The solicitation of written, competitive proposals or offers, to be used as a basis for making an acquisition, or entering into a contract when specification and price will not necessarily be the predominant award criteria.

(24) "Request for Qualifications (RFQ)": A written document soliciting information regarding the qualifications of providers of services OUS or an institution is interested in procuring. An RFQ should describe the services that are needed and the method to be used in evaluating the responses received.

(25) "Requirements Contract": An agreement in which a single contractor agrees to supply all of OUS's or any of its institution's requirements for specific goods, equipment, or services that arise during a specified time period.

(26) "Responsible Bidder or Proposer": Has the meaning given in OAR 580-040-0275.

(27) "Responsive Bid or Proposal": Has the meaning given in OAR 580-040-0277.

(28) "Retainer Agreement": An agreement by which, pursuant to a formal Request for Proposals or bid process, multiple contractors are authorized to provide specific supplies or equipment to or perform specific services for OUS or its institutions in response to requests for price quotations.

(29) "Single Seller": The only vendor of a particular product or service reasonably available. If OUS or one of its institutions chooses to procure a particular product or service that is only available from one vendor, documentation must be maintained to support the determination that the product or service is available only from that one seller.

(30) "Solicitation Document": An Invitation to Bid or Request for Proposals, which includes all documents, whether attached or incorporated by reference, utilized for soliciting bids or proposals.

(31) "Women Business Enterprise (WBE)": The meaning given in OAR 125-030-0000.

(32) "Work": The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire contract and the timely carrying out and completion of all duties and obligations imposed by a contract.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0220

Designation of Purchasing Agents and Contract Officers

Each institution president shall designate staff authorized to enter into purchasing and contracting agreements for the institution. Such staff,

referred to as authorized personnel, shall be the only individuals who may procure supplies, equipment, and services and enter into contracts.

(1) The chief administrative officer of each institution shall keep a list, either by name or by title, of those designated authorized personnel along with a description of the types and amounts of procurements and contracts they are authorized to enter into.

(2) Purchasing and contracting agreements issued by individuals not designated as authorized personnel shall be void.

(3) Authorized personnel shall be responsible for ensuring that the proper procedures, as detailed in OAR 580-040-0223 to 580-040-0295, are followed for all institutional procurements. Institutions may take appropriate action in response to expenditures authorized contrary to OAR 580-040-0223 to 580-040-0295. Such actions include, but are not limited to, providing educational guidance, imposing disciplinary measures, and holding individuals personally liable for such expenditures.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0223

Applicable Model Public Contract Rules

The following provisions of the Attorney General's Model Public Contract Rules shall be applicable to the bidding, awarding, and administration of public contracts of OUS and any of its institutions:

(1) OAR 137-030-0010(5) — Compliance and exceptions to terms and conditions of solicitation documents;

(2) OAR 137-030-0012 — Bids or Proposals Are Offers;

(3) OAR 137-030-0030(2) and (3) — Identification and Receipt of bids or proposals;

(4) OAR 137-030-0050 — Request for Change or Protest of Solicitation Specifications or Contract Provisions;

(5) OAR 137-030-0055 — Addenda to Solicitation Documents;

(6) OAR 137-030-0060 — Pre-Opening Modification or Withdrawal of Bids or Proposals;

(7) OAR 137-030-0065 — Receipt, Opening, and Recording of Bids and Proposals;

(8) OAR 137-030-0070 — Late Bids and Proposals, Late Withdrawals, and Late Modifications;

(9) OAR 137-030-0075 — Mistakes in Bids or Proposals;

(10) OAR 137-030-0080 — Time for Acceptance;

(11) OAR 137-030-0085 — Extension of Time for Acceptance of Bid or Proposal;

(12) OAR 137-030-0102 — Rejection of all Bids or Proposals;

(13) OAR 137-030-0104 — Protest of Contractor Selection, Contract Award;

(14) OAR 137-030-0115(1) — Cancellation of invitations to bid or requests for proposals in the public interest;

(15) OAR 137-030-0120 — Disposition of Bids or Proposals if Solicitation Cancelled;

(16) OAR 137-030-0130 — Foreign Contractor; and

(17) OAR 137-030-0150 — Right to Inspect Plant.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0225

Processes for Procurement of Goods and Services

(1) OUS shall establish several basic processes for the procurement of goods and services:

(a) Formal;

(b) Informal;

(c) Emergency;

(d) Single Seller;

(e) Intergovernmental;

(f) Procurement Cards;

(g) Price Agreements;

(h) Retainer Agreements;

(i) Requirements Contracts; and/or

(j) Qualified Vendor Listings.

(2) For each of the processes used in the procurement of goods and services, authorized personnel shall retain documentation, either hard copy or electronic, supporting the process and the actions taken to fulfill the guidelines of that process consistent with the requirements of OAR 580-040-0295. Such documentation shall be subject to audit.

ADMINISTRATIVE RULES

(3) The formal procurement process shall be used, unless other exemptions apply, for all purchases of supplies, equipment, and services where the estimated cost exceeds \$50,000.

(a) Multiple contracts, purchase orders, or purchasing requisitions shall not be issued separately with the intent to circumvent the formal purchasing process.

(b) The formal process may be accomplished in either of two ways the institution selects:

(A) Invitation to Bid — The formal bid process will require that the invitation to bid be advertised in a manner that is likely to reach bidders. The advertisements shall include information regarding the goods or services to be purchased and the time schedule for the receipt of such goods or services. The contract under this process shall be awarded to the lowest responsive and responsible bidder who meets the specifications of the contract.

(B) Request for Proposal (RFP) — The formal Request for Proposal process shall follow the same guidelines as the formal bid process except that the specifications and price will not necessarily be the predominant award criteria. Award criteria shall be detailed in the Request for Proposal.

(4) The informal procurement process may be used for all purchases of supplies, equipment, and services where the estimated cost exceeds \$5,000 but does not exceed \$50,000 and where OUS or any of its institutions chooses not to follow the formal procurement process. The informal procurement process may also be used for any procurement regardless of the estimated cost if use of the informal procurement process will not interfere with competition among prospective contractors, reduce the quality of services, or increase costs.

(a) The informal process may be accomplished through the solicitation of competitive quotes from at least three vendors. Solicitation may be accomplished by advertisement and/or by OUS or any of its institutions initiating a request to vendors to make an offer. Written, oral, or electronic quotes may be solicited.

(b) When procuring goods or services through the solicitation process, information regarding vendors contacted, basis for selection, prices of various vendors and other information pertinent to the solicitation must be clearly documented. If three vendors are not reasonably available, the justification for soliciting fewer vendors shall be documented.

(5) When procuring supplies, equipment and services through an emergency process, the designation of such emergency may only be authorized by an institution president or chief financial officer. The procurement process to be used will be at the discretion of authorized personnel, but must be documented. Such documentation must justify the use of such emergency process.

(6) When purchasing supplies, equipment and services from a single seller, institutions are not required to follow competitive procedures. Institutions shall, at the time of initial procurement, specify their intent, if any, to procure future upgrades or other compatible items through that vendor. Institutions shall document findings to support the determination that the product is available from only one seller.

(7) Regardless of dollar value, OUS and its institutions may contract with, and purchase goods and services from, other State of Oregon agencies, local government units, federal government units, or any other governmental entity without the use of competitive procedures. However, contracts with other states and foreign governments must be approved by the Oregon Attorney General's office.

(8) Procurement cards, or other methods of direct purchasing, may be used for any purchase where the estimated cost does not exceed \$5,000.

(9) Following appropriate competitive procedures, OUS and its institutions may enter into price agreements with vendors to provide specific items at a set price during a specified period of time. OUS and its institutions may also purchase using State of Oregon or other governmental unit price agreements as authorized personnel deem appropriate without the use of competitive procedures.

(10) OUS and its institutions may enter into retainer agreements with vendors using appropriate competitive procedures that take into account, at a minimum, the qualifications and reputation of the vendors, price structure, ability and willingness to respond to requests from one or more colleges and universities, location, and such other factors as authorized personnel deem appropriate.

(a) A Request for Proposals (RFP) or bid process shall be used in selecting vendors for specific retainer agreements.

(b) Vendors may be selected to provide specific goods or services based on availability, responsiveness, quality, geographic location, track record, price, etc. Selection of vendors from the retainer agreement may be based on quotes or on the specific nature of the goods or services to be pro-

vided. The agent or officer should solicit prices from at least two vendors under the retainer agreement, or document the reason for not doing so.

(c) Authorized personnel shall maintain appropriate records of the competitive process used to select a vendor from the list of vendors with current retainer agreements in force at the time the selection is made.

(11) Consistent with these rules, OUS and its institutions may enter into requirements contracts to supply all of OUS's or an institution's requirements for specific goods, equipment, or services that arise during a specified time period.

(12) OUS or its institutions may contract directly with a vendor listed on a qualified vendor list if only one vendor meets OUS's or an institution's needs and if the RFI or RFQ informed potential vendors that direct contracting could occur. If more than one vendor meets OUS's or an institution's needs, solicitations shall follow the appropriate procedures. However, solicitation may be limited to the qualified vendor listing.

(13)(a) Notwithstanding any of the procedures in this rule, OUS and its institutions are authorized to develop alternative formal procurement methods that meet the following objectives:

(A) Respond to innovative business and market methods; or

(B) Contribute to institution productivity improvement and process redesign; or

(C) Result in comprehensive cost-effectiveness and productivity for the institution; and

(b) Provide open consideration to more than one vendor using evaluation criteria that may include, but are not limited to, cost, quality, service, compatibility, product reliability, operating efficiency, expansion potential, vendor experience and reliability, commitment to support regional business development and support for innovation.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0230

Exemptions

(1) Institutions need not follow, regardless of value, competitive procedures for the following:

(a) Contracts for the provision of educational services.

(b) Single seller goods and services. When purchasing from a single seller, institutions shall document findings to support the determination that the product is available from only one seller.

(c) Brand-name goods and services or product prequalification. Institutions may specify brand name in the procurement of goods and services if that particular product or service has specific documentable attributes not found in other products. In addition, when specific design or performance specifications must be met for a product to be purchased, an institution may specify a list of qualified products by reference to the prequalified product(s) of particular manufacturers or sellers.

(d) Advertising and media services contracts.

(e) Price-regulated goods and services. Institutions may, regardless of dollar value, contract for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

(f) Purchases under federal contracts. When the price of goods and services has been established by a contract with an agency of the federal government pursuant to a federal contract award, OUS and its institutions may purchase the goods and services in accordance with the federal contract without subsequent competitive bidding. In addition, specific equipment that is expressly required under the terms of the contract and that is only available from one source is exempt from competitive procedures.

(g) Copyrighted materials. Institutions may purchase copyrighted materials without competitive bid and regardless of dollar amount. Copyrighted materials covered by this exemption may include, but are not limited to, textbooks, workbooks, curriculum kits, reference materials and audio, visual, and electronic media.

(h) Investment contracts.

(i) Food contracts. This exemption shall apply exclusively to the procurement of food and food-related products.

(j) Periodicals, library books and library materials.

(k) Maintenance services for the useful life of goods. Institutions may purchase maintenance services for the useful life of goods directly from the vendor of those goods.

(l) Used personal property.

(m) Goods purchased for resale.

(n) Intercollegiate athletic programs. OUS and its respective institutions may specify a product by brand name or make or the products of par-

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ticular manufacturers or sellers when procuring equipment and supplies used in intercollegiate or interscholastic athletic programs.

- (o) Media for athletic programs.
- (p) Athletic contest agreements.
- (q) Cadaveric organs.
- (r) Hotel sites for large conferences and workshops.
- (s) Dues, registrations, and membership fees.
- (t) Gasoline, diesel fuel, heating oil, lubricants, and asphalt.
- (u) Purchases of supplies, maintenance, and services for ocean-going vessels when they are in other than home port.
- (v) Equipment repair and overhaul.
- (w) Goods and services purchased in foreign countries.

(2) Exemptions from competitive procedures may be granted for a particular contract or contracts not otherwise exempted under these rules by the president or chief financial officer of the institution. Sufficient documentation must be retained regarding the need for such exemptions.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0235

Basis for Awarding of Contracts

OUS and its respective institutions shall award contracts based on various factors that shall be identified in the notice of contract. Such factors may include, but not be limited to, price; quality; life cycle costing; vendor experience and reliability; support for regional business development; support for productivity innovation; performance specifications; and timeliness.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0240

Determination of Contractual Terms and Conditions

Except to the extent OUS has established mandatory contract provisions, OUS and any of its institutions are authorized to determine the terms and conditions of solicitations and contracts, provided such terms and conditions are not contrary to statutory or regulatory requirements applicable to OUS.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0245

Contract Amendments (Including Change Orders and Extra Work)

An amendment for additional work or product that is reasonably related to the scope of work under the original contract, including change orders, extra work, field orders, or other change in the original specifications that increases the original contract price or length of time, may be made with the contractor without competitive bidding provided that the amendment does not materially alter such a contract or that the increase in the value of the contract does not change the required method of procurement.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0255

Pre-Bid and Pre-Proposal Conferences

(1) Pre-bid or pre-proposal conferences may be scheduled. Each pre-bid and pre-proposal conference shall be described in the corresponding solicitation document as "voluntary" or "mandatory." If such a conference is designated as "mandatory," it shall be required for a bidder or proposer to attend in order to submit a bid or proposal for the corresponding contract.

(2) The bidder or proposer may authorize a representative other than himself/herself to attend the pre-bid or pre-proposal conference.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0260

Acceptance of Bids and Proposals by Facsimile or Electronic Data Interchange

OUS and any of its institutions may determine if it is appropriate for bids and proposals to be accepted by facsimile or Electronic Data Interchange. Institutions shall establish the conditions for solicitations, either individually or by type of solicitation. When OUS or any of its institutions chooses to accept bids or proposals by facsimile, it shall follow the requirements outlined in OAR 137-030-0013(3). When OUS or any of its institutions chooses to accept bids or proposals by Electronic Data Interchange, it shall follow the requirements outlined in OAR 137-030-0014(4).

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0275

Responsible Bidders; Responsibility Investigation

(1) A "responsible bidder or proposer" is an individual, firm, corporation or entity who has the capability in all respects to perform fully the contract requirements, the integrity and reliability that will assure good faith performance, and who has not been disqualified by OUS or any of its institutions.

(2) OUS or any of its institutions has the right, prior to awarding any public contract, to make such investigation as is necessary to determine whether a bidder is responsible.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0277

Responsive and Nonresponsive Bids or Proposals; Acceptance and Rejection

(1) A "responsive bid or proposal" is one that complies in all material respects with an Invitation to Bid or Request for Proposals and with all prescribed bidding and proposal procedures and requirements. A "nonresponsive bid or proposal" is one that does not meet all material aspects of an Invitation to Bid or a Request for Proposal or that does not comply with all prescribed bidding and proposal procedures and requirements.

(2) OUS or any of its institutions shall accept, and consider for award, only those bids or proposals that are responsive as defined in this rule. Nonresponsive bids or proposals shall be rejected.

(3) Nothing in this rule shall limit the ability of OUS or any of its institutions to monitor contractor or vendor performance during the term of a contract.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0280

Rejection of Individual Bids or Proposals

(1) This rule applies to rejections, in whole or in part, of individual bids or proposals. OUS or any of its institutions may reject, in whole or in part, any bid or proposal not in compliance with all prescribed bidding procedures and requirements, and may reject for good cause any bid or proposal upon a written finding by OUS or the institution that it is in the public interest to do so.

(2) Reasons for rejecting a bid or proposal include but are not limited to finding that:

(a) The bidder or proposer has not prequalified as required in the Invitation to Bid or Request for Proposal, or is disqualified under ORS 200.075, 279.037, or these rules; or

(b) The bidder or proposer has been declared ineligible by the Commissioner of the Bureau of Labor and Industries under ORS 279.361; or

(c) The bid or proposal is nonresponsive, that is, it does not conform in all material respects to solicitation document requirements, including all prescribed public procurement procedures and requirements; or

(d) The supply, service or construction item offered in the bid or proposal is unacceptable by reason of its failure to meet the requirements of the solicitation documents or permissible alternates or other acceptability criteria set forth in the solicitation documents; or

(e) The bidder or proposer is nonresponsive, i.e., is not capable of satisfying the terms and conditions of the public contract in a timely man-

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ner due to financial incapacity, inability to obtain bonding, loss of license, poor performance history or other objective cause; or

(f) The bidder or proposer within the last five years has been found, in a civil, criminal, or administrative proceeding, to have committed or engaged in fraud, misrepresentation, price-rigging, unlawful anti-competitive conduct or similar behavior; or

(g) The bidder or proposer has been determined responsible (i.e., adjudicated by a court, or as determined in writing by OUS or any of its institutions in the case of a public contract) for more than one breach of a public or private contract or contracts in the last three calendar years before the scheduled date of the bid or proposal opening; or

(h) The bid or proposal security has not been submitted or properly executed as required by the solicitation documents; or

(i) The bidder or proposer has not met the emerging small business, disadvantaged business, minority business and women business enterprise requirement, if any, established by OUS or any of its institutions, and has not made a good faith effort in accordance with ORS 200.075 to comply with the requirements prior to the time bids or proposals are opened; or

(j) The bidder or proposer has failed to certify in accordance with OAR 580-040-0292(3); or

(k) Other circumstances of the particular bid or proposal, or bidder or proposer, indicate that acceptance of the bid or proposal would impair the integrity of the selection process or result in an imprudent contract by OUS or the institution.

(3) For purposes of this rule, the business registry of bidders or proposers shall be subject to scrutiny, i.e., confirmation of ownership or identification of officers and directors, in order to identify previously disqualified bidders or proposers, and thus prevent any subterfuge, change of apparent ownership or other adjustments in formal appearance, to avoid application of this rule or of the disqualification provisions of ORS 279.037 to 279.045 and these rules.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0285

Bidder or Proposer Disqualification

(1) As used in this rule:

(a) "Disqualification" means the debarment, exclusion or suspension of a person from the right to submit bids or proposals in response to OUS or institution solicitations for a reasonable, specified period of time named in the order of disqualification. A contractor or vendor so debarred, excluded or suspended is disqualified.

(b) "Person" means an individual, partnership or corporation. Disqualification attaches to and follows the individual, so that an individual who is a partner in a partnership or an officer or principal in a corporation that is disqualified may not reform the business entity as a way of avoiding the disqualification.

(2) The following are grounds for bidder or proposer disqualification:

(a) The person does not have sufficient financial ability to perform the contract. If a bond is required to ensure performance of a contract, evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability;

(b) The person does not have equipment available to perform the contract;

(c) The person does not have key personnel available of sufficient experience to perform the contract; or

(d) The person has repeatedly breached contractual obligations to public and private contracting agencies.

(3) As provided in ORS 200.075, the following are grounds for suspension of a bidder's, proposer's, contractor's, or subcontractor's right to bid, propose or participate in a public contract:

(a) If the person has entered into any agreement representing that a disadvantaged, minority, women or emerging small business enterprise, certified pursuant to ORS 200.055, will be performing or supplying materials under a public improvement contract without the knowledge and consent of the certified enterprise;

(b) If a person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any subcontractor that is certified disadvantaged, minority, women, or emerging small business enterprise;

(c) If the person uses a disadvantaged, minority, women or emerging small business enterprise to perform contracting services or provide supplies under a public improvement contract to meet an established DBE/MBE/WBE/ESB goal, when the enterprise does not perform a com-

mercially useful function, as defined by ORS 200.075(3), in performing its obligations under the contract.

(4) OUS or any of its institutions may make such investigation as is necessary to determine whether there are grounds for disqualifying a person. If a bidder or proposer, or prospective bidder or proposer, fails to supply such information promptly as requested by OUS or an institution, such failure is grounds for disqualification.

(5) Any information voluntarily submitted by a bidder or proposer, or prospective bidder or proposer, pursuant to an investigation under section (4) of this rule, or in a prequalification statement, or in a prequalification request submitted pursuant to these rules, shall be deemed a trade secret pursuant to ORS 192.501(2), if requested by the person submitting the information and verified to be a trade secret by OUS or one of its institutions.

(6) The bidder or proposer, or prospective bidder or proposer, will be notified in writing by personal service or certified mail of OUS's or one of its institution's decision to disqualify the person from bidding or proposing with OUS or the institution. The notice shall contain:

(a) The effective date of the disqualification and the effective period of disqualification;

(b) The grounds for disqualification from bidding or proposing; and

(c) A statement of the person's appeal rights and applicable appeal deadlines.

(7) If a person wishes to appeal OUS's or any of its institution's decision to disqualify, the person must notify OUS or the institution, as appropriate, in writing within three business days after receipt of the notification.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0290

Purchasing Policies Governing the Acquisition of Goods and Services from Qualified Rehabilitation Facilities

OUS and its institutions shall purchase goods and services from Qualified Rehabilitation Facilities in accordance with the provisions of ORS 279.835 to 279.855 and applicable Administrative Rules.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0292

Affirmative Action; General Policy

(1) The general policy of OUS and its institutions shall be to expand economic opportunities for Minority Business Enterprises, Women Business Enterprises and Emerging Small Businesses by offering the contracting and subcontracting opportunities available through OUS and institution contracts. Notice of all contract and bid request solicitations using the formal process outlined in OAR 580-040-0225 shall be provided to the Advocate for Minority, Women and Emerging Small Business and the Oregon Department of Administrative Services for the Oregon Opportunity Register and Clearinghouse when any other solicitation is sent.

(2) OUS shall not knowingly contract with or procure goods or services from any organization, business entity or individual that discriminates on the basis of age, disability, national origin, race, marital status, religion, sex or sexual orientation.

(3) Bidders and proposers shall certify, as part of the bid or proposal documents accompanying the bid or proposal on a public contract, that such bidder or proposer has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontractors.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-040-0295

Record Keeping Requirements

(1) Documentation of all purchasing and contracting transactions will be made available for inspection by OUS Internal Audit Division upon request.

(2) Authorized personnel shall maintain documentation, whether written or electronic, regarding all purchasing and contracting transactions.

(a) For purchases not exceeding \$5,000, only a vendor invoice must be retained.

(b) For purchases where the cost exceeds \$5,000 but does not exceed \$50,000, the following must be retained:

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- (A) The method of procurement;
- (B) The names of firms/individuals and cost estimates considered;
- (C) The basis for selection or awarding of contract;
- (D) Other information pertinent to the solicitation; and
- (E) Any other documentation required by these rules.

(c) For purchases where the estimated cost exceeds \$50,000, the following must be retained:

- (A) The method of procurement;
- (B) A copy of the announcement requesting bids or proposals;
- (C) The names of firms/individuals and cost estimates considered;
- (D) The basis for selection or awarding of contract;
- (E) A copy of the resulting contract and any subsequent amendments;
- (F) Other information pertinent to the solicitation; and
- (G) Any other documentation required by this rule.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 6-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 7-2004, f. & cert. ef. 7-23-04; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-050-0001

Comprehensive Plan Coordination

(1) Use of property owned by the Board shall conform to this rule and the procedures in the Department of Higher Education Coordination Plan created pursuant to the Land Conservation and Development Commission OAR chapter 660, division 030, State Agency Coordination. In approving decisions concerning use of property owned by the Board, the Department, institutions and managers at activity locations shall find that the project, plan, or action complies with the Statewide Planning Goals and is compatible with applicable acknowledged comprehensive plans.

(2) Compliance with Statewide Goals and compatibility with acknowledged Comprehensive Plans shall be achieved by making decisions concerning property owned by the Board in conformance with local jurisdiction comprehensive land use plans and land use regulation as follows:

(a) For each of the Board's institutions, a long-range campus development plan shall be formulated covering at least the area within the approved campus boundaries. Campus plans shall be reviewed with officials of the local jurisdiction for conformance with the local acknowledged Comprehensive Plan. A campus plan may be formulated as a refinement plan or amendment to the local Comprehensive Plan and be implemented as a special zoning district or planning district within the local jurisdiction land use regulations;

(b) For other lands that support activities governed by the Board, the activity and the land use shall conform to the local jurisdiction acknowledged Comprehensive Plan and associated land use regulations.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 4-1990, f. & cert. ef. 2-13-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04; Administrative correction, 2-17-05; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-050-0005

Conveyances

Authorized conveyances of all real property shall be approved by the Assistant Attorney General serving as chief counsel to the Department, or a designee, and executed by the Board President and Board Secretary pursuant to ORS 351.150.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04; Administrative correction, 2-17-05; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-050-0010

Easements

The Board President and the Board Secretary are authorized, without Board approval, to execute easements affecting real property owned by the State of Oregon for the benefit of the Department in accordance with the following:

(1) The easement shall be recommended by the Vice Chancellor for Finance and Administration, or designee, and shall be in a form approved by the Board's legal counsel.

(2) If the property affected is within approved projected campus boundaries, the easement shall relate only to underground utilities with appropriate access.

(3) If the property affected is not within approved projected campus boundaries, the easement shall relate either to utilities or to rights of way for access to adjacent properties.

(4) Easements granting rights in real property other than those set forth in sections (2) and (3) of this rule shall be approved by the Board prior to their execution by the Board President and Board Secretary.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1985, f. & ef. 12-19-85; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04; Administrative correction, 2-17-05; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-050-0015

Purchases of Real Property

The Vice Chancellor for Finance and Administration or designee has authority to purchase real properties, with appropriate report to be made to the Board, subject to the following conditions:

(1) "Location." Properties shall be located within the Board-established projected campus boundaries of an institution. Property exchanges are subject to specific Board authorization.

(2) "Sources of Funds." Properties to be used principally as sites for educational and general construction or improvements, or principally for current educational and general use, shall be financed from funds available for these purposes, usually a state appropriation or proceeds from the sale of bonds issued under the provisions of Article XI-G of the Oregon Constitution. Properties to be used principally as sites for auxiliary enterprises construction or improvements, or principally for current auxiliary enterprises use, shall be financed from funds available for these purposes, such as proceeds from the sale of bonds issued under provisions of Article XI-F(1) of the Oregon Constitution or appropriate restricted funds.

(3) "Purchase Price." Purchases shall be made at prices based on current market values, determined by averaging two or more independent appraisals. Limit on each purchase shall be \$100,000.

(4) "Priority of Property Acquisitions." To the extent practical, purchases shall be made in the following priority order:

(a) Site for building construction or other improvement projects for which funds are available;

(b) Unimproved property;

(c) Property with improvements having value materially less than the land;

(d) Sites intended for building or other improvement projects for which construction authorization is expected to be sought from the Legislature at its next session, with a high priority assigned to the project;

(e) Property for which the owner plans costly improvements or other action that would materially increase the market value and cost to the Board if acquired later;

(f) Property offered for sale by owner.

(5) "Condemnation." Authorization to acquire real property by condemnation is subject to specific Board action.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1985, f. & ef. 12-19-85; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04; Administrative correction, 2-17-05; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-050-0020

Appointment of Professional Consultants

The Vice Chancellor for Finance and Administration or designee is authorized to select and employ architects, engineers, planners and related professional consultants (collectively called "Consultants" in this rule) energy management, construction management, facilities planning, technical services and related activities in accordance with the following standards and procedures:

(1) General Standards; Selection Factors. The purposes of this rule are to assure that Consultants are considered fairly for professional service Contracts; that those selected will be highly qualified; and to encourage excellence and cost consciousness on the part of Consultants. The following factors shall be considered in evaluating and selecting Consultants:

(a) Experience, design talent and technical competence, including an indication of the planning process expected to be used in the work;

(b) Capacity and capability to perform the work, including any specialized services within the time limitation set for the work;

(c) Past record of performance on contracts with governmental agencies and private owners with respect to such factors as cost control, quality of work, ability to meet schedules and contract administration;

(d) Availability to and familiarity with the area in which the work is located, including knowledge of design and construction techniques peculiar to the area;

(e) Proposed cost management techniques to be employed; and

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(f) Ability to communicate effectively.

(2) Procurement of Consultant Services Under Retainer Agreements.

(a) At least biennially, in a trade periodical or an Oregon newspaper of general circulation, or on the Oregon University System's procurement website, and in at least one trade periodical or newspaper geared towards minority, women and emerging small businesses, the Vice Chancellor for Finance and Administration or designee shall publish a notice stating in substance that copies of this rule may be obtained from the Office of Finance and Administration and that consultants are invited to submit qualifications to the Vice Chancellor for Finance and Administration or designee for consideration. The Vice Chancellor for Finance and Administration or designee shall also provide a copy of the above notice to the Office of Minority, Women and Emerging Small Business. A list of the names and addresses of the institution facilities planning official(s) designated by the institution president shall be provided to any consultant upon request.

(b) Following the procedures set out in section (2)(a) of this rule, the Vice Chancellor for Finance and Administration or designee will prepare a list of potential Consultants. An Institution that wishes to enter into retainer agreements may convene a committee as described in paragraph (3)(c)(C) of this rule. Such committee shall review the list prepared by the Vice Chancellor for Finance and Administration or designee and any of the Consultants who have expressed an interest and will select Consultants who appear to have the qualifications for and interest in performing professional services for the Institutions. The Institution Facilities Planning Official shall recommend to the Vice Chancellor for Finance and Administration or designee the selected Consultants.

(c) Each selected Consultant shall be invited to enter into a retainer agreement for a two-year period with the option to extend for an additional two-year term, utilizing a form of agreement approved by the Vice Chancellor for Finance and Administration. Services of the selected Consultants shall be available to all Institutions requiring such services upon request of any Institution Facilities Planning Official. The Office of Finance and Administration, on its own initiative, selects consultants for retainer agreements. The Vice Chancellor for Finance and Administration or designee may enter into interagency agreements to permit other public agencies to utilize the services of Consultants selected for retainer agreements pursuant to this subsection.

(d) Each institution facilities planning official will maintain a current roster of all consultants chosen for institutional retainer agreements by all institutions as well as a roster of retainer agreements entered into by the Office of Finance and Administration.

(e) The names of interested Consultants not selected under subsection (b) of this rule shall be maintained on a current roster and provided to the Institution Facilities Planning Official at each Institution.

(3) General Procurement of Consultant Services: The procedures to be followed when contracting for professional consulting services will depend upon a combination of factors including the total anticipated fee and whether or not the Consultant has entered into a retainer agreement pursuant to section (2) of this rule.

(a) For professional services contracts where the anticipated professional fee, including Consultant fees and reimbursable expenses and all amendments and supplements, is \$75,000 or less, the Vice Chancellor for Finance and Administration or designee may authorize an appropriate Institution Facilities Planning Official to contract for such professional services with any Consultant selected in subsection (2)(a) or (2)(b) of this rule or such other Consultant as the Institution Facilities Planning Official may choose who appears to have the qualification for and interest in the proposed assignment.

(b) For professional service contracts involving an anticipated professional fee, including Consultant fees and reimbursable expenses and including amendments and supplements, between \$75,001 and \$200,000 or in an Emergency situation the Vice Chancellor for Finance and Administration or designee may authorize the Institution Facilities Planning Official to select a Consultant to perform the needed services using the following procedure:

(A) Select a Consultant:

(i) From those on retainer who appear to have the qualifications for and interest in the assignment; or

(ii) Select at least three Consultants not on a retainer agreement who appear to have the qualifications for and interest in the proposed assignment and notify each Consultant selected in reasonable detail of the proposed assignment and invite each Consultant to submit a Written Proposal.

(B) The Institution Facilities Planning Official shall negotiate a Contract with the selected Consultant, and if a mutually satisfactory con-

tract cannot be agreed to, the Institution Facilities Planning Official may select another Consultant from the recommended consultants and enter into contract negotiations.

(c) For professional service contracts with an anticipated professional fee, including Consultant fees and reimbursable expenses over \$200,001, except in Emergency situations, the Institution Facilities Planning Official shall select Consultants for consideration using the following procedure:

(A) Announcement: The Institution Facilities Planning Official will give notice of intent to contract for professional services in a trade periodical, or newspaper of general circulation, or on the Institution's procurement website and in at least one trade periodical or newspaper geared towards minority, women and emerging small businesses. The notice shall include a description of the proposed project, the scope of the services required, and a description of special requirements, if any. The notice will invite qualified prospective Consultants to apply. The notice will specify where the Solicitation Document may be obtained and the Closing. The Institution Facilities Planning Official shall also provide a copy of the above notice of intent to the Office of Minority, Women and Emerging Small Business.

(B) Application: The application or Consultant's qualification must include a statement that describes the prospective Consultant's credentials, performance data and other information sufficient to establish the Consultant's qualification for the project, as well as any other information requested in the announcement.

(C) Initial Screening: The Institution Facilities Planning Official shall appoint a Consultant screening committee consisting of no fewer than two individuals to review, score, and rank the Consultants according to the solicitation criteria. The Consultant screening committee will evaluate the qualifications of all applicants and select prospective Consultants whose applications demonstrate that the selected Consultants can best fulfill the provisions of section (1) of this rule.

(D) The Final Selection Procedure:

(i) Interviews: Following screening and evaluation, the Institution Facilities Planning Official and Consultant screening committee may invite to interview, in person, finalists selected from the initial screening.

(ii) Award of Contracts: The Institution Facilities Planning Official will make the final selection based on such factors as applicant capability, experience, project approach and references; recommend the Consultant to the president or designee; and notify the selected Consultant of such selection.

(iii) An appropriate Institution Facilities Planning Official shall then negotiate a Contract with the selected Consultant. In the event a mutually satisfactory Contract cannot be agreed to, the Consultant screening committee may select for consideration and contract negotiations another Consultant from the remaining recommended Consultants.

(4) Following selection of a consultant, a report of all appointments under subsections (4)(a), (4)(b), and (4)(d) of this rule shall be made to the Board through the Vice Chancellor for Finance and Administration.

(5) The president or designee of the Institution may execute amendments, modifications or supplements to executed professional service Contracts within the scope of the original Contract and the limits prescribed in this rule.

(6) Any Consultant who has submitted a Proposal as outlined in subsections (2)(b), (3)(a), (3)(c) of this rule and claims to have been adversely affected or aggrieved by the selection of a competing Consultant, and unless a different deadline is specified in the notice of intent to contract for professional services, shall:

(a) Have seven (7) calendar days after receiving notice of selection to submit a Written protest of the selection to the Institution Facilities Planning Official. The Institution Facilities Planning Official shall not consider a selection protest submitted after the time period provided in this subsection, unless a different deadline is provided in the notice of intent to contract.

(b) The Institution Facilities Planning Official, in consultation with the Vice Chancellor for Finance and Administration or designee, shall have the authority to settle or resolve a Written protest submitted in accordance with this rule. The Institution Facilities Planning Official shall respond to the protesting Consultant within ten days of receipt of such Written protest.

(c) Judicial review of the disposition of a Written protest submitted in accordance with subsection (6)(a) of this rule may be available pursuant to the provisions of ORS 183.484.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1985, f. & ef. 12-19-85; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 6-1994, f. & cert. ef. 4-28-94; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04; OSSHE 1-2005(Temp), f. 2-9-05.

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cert. ef. 2-10-05 thru 8-9-05; Administrative correction 8-17-05; OSSHE 5-2005, f. & cert. ef. 8-24-05; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-050-0025

Naming Buildings

No building or structure of the Department shall be named after a living person. However, the Board may make exceptions to this rule if a donor contributes a substantial share of the cost of construction or if other unusually meritorious reasons exist. Presidents are authorized to name buildings or structures.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04; Administrative correction, 2-17-05; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-050-0032

Contracts for Repairs and Public Improvements

(1) The Vice Chancellor for Finance and Administration, or designee shall be the contracting officer. All Contracts for the repair of facilities or for Public Improvements shall be awarded and executed by the contracting officer unless delegated by the contracting officer.

(2) The contracting officer may delegate, through the Institution president, to a specific person at each college and university the authority to execute Contracts for the repair and improvement of facilities, provided that all applicable laws and rules are fulfilled. The Institution president may, by written agreement with the president of another Institution, subject to this rule, transfer such delegation to a person at such other Institution. A copy of each such Contract must be filed with the contracting officer or designee who may audit the project and the contracting process.

(3) The contracting officer or designee shall award Contracts valued at \$25,000 or more for the repair and improvement of facilities to the lowest Bidder or best Proposer pursuant to appropriate competitive processes, including competitive bids, design/build competitions and negotiated procurements utilizing Requests for Proposals, including agreement for construction manager/general contractor. Criteria for award shall include price and any other factors as the contracting officer or designee deems appropriate, including, but not limited to, past performance of the Contractor, experience of the Contractor and the Contractor's management team on projects of similar size and scope, the Contractor's reputation for quality and timely completion of projects, the Contractor's business and project management practices, the Contractor's demonstrated commitment to affirmative action, the Contractor's willingness to agree to the Contract terms proposed by the contracting officer or designee and the Contractor's ability to post an appropriate bond. The contracting officer or designee shall maintain appropriate records of the competitive process utilized for each Contract. The president of each college and university shall determine the procedures to be used for the award of Contracts valued at less than \$25,000 for the repair and improvement of facilities.

(4) The contracting officer or designee may enter into retainer agreements with Contractors using appropriate competitive procedures that take into account, at a minimum, the qualification and reputation of the Contractors, price structure, ability and willingness to respond to requests from one or more colleges and universities, location and such other factors as the contracting officer or designee shall deem appropriate. The contracting officer or designee may utilize the services of Contractors under retainer agreement for projects whose Contract Price is less than the maximum established by the Board of Higher Education in its budget or \$500,000, whichever is greater.

(a) Supplements to the retainer agreement, describing the scope of the specific work and price for which it will be performed, must be executed prior to the commencement of any Work by a Contractor.

(b) Supplements having a Contract Price of \$25,000 or less shall not be subject to the provisions of section (6) of this rule. However, projects may not be divided into more than one supplement to avoid the application of section (6).

(c) The contracting officer or designee shall maintain appropriate records of the competitive process used to select a Contractor from the list of Contractors with current retainer agreements in force at the time the selection is made and the supplement is issued.

(d) The contracting officer or designee should solicit prices from at least two Contractors under the retainer agreement, or document in the contracting file the reason for not doing so.

(5) The Institution president may declare an Emergency when he or she deems such a declaration appropriate. The reasons for the declaration shall be filed with the Vice Chancellor for Finance and Administration or designee and shall include justification for the use of any sole source or

negotiated procurements for repairs and improvements within the scope of the Emergency declaration. Upon the declaration, the contracting officer or designee may negotiate a Contract with any qualified Contractor for repairs or improvements included in the scope of the declaration. The contracting officer or designee shall maintain appropriate records of negotiations carried out as part of the contracting process.

(6) All Public Improvement Contracts shall require Contractors to pay and Contractors shall pay, at least the rate of wage for labor determined by the Bureau of Labor and Industries to be the rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed for work performed under the Contract. The contracting officer or designee may require any Contractor to pay an amount to the Bureau of Labor and Industries to help defray costs of determining and administering prevailing wages. The method of determining any such charge shall be described in the Solicitation Document for the project.

(7) No Contract shall be awarded to any Contractor who is not licensed to do business in the State of Oregon.

(8) The contracting officer or designee may require Offerors and Contractors to post and maintain such bonds as the contracting officer or designee decides is appropriate. Requirements related to the posting, form, maintenance, and return shall be included in solicitations and requests for bids and proposals.

(9) All Contractors shall maintain in force at all times during the period of the Contract such insurance as may be required by the contracting officer or designee.

(10) The contracting officer or designee shall ensure that retainage equal to five percent of the Contract Price is withheld from payments to any Contractor. Such retainage shall be invested by the Vice Chancellor for Finance and Administration or designee in accordance with the provisions of OAR 580-040-0007. The principal amount of such retainage and all interest or other earnings from the date of the establishment of a retainage account through the date of completion established in the Contract, less reasonable administrative costs, shall be paid to the Contractor or the Contractor's designee upon notification in writing by the contracting officer or designee that the work contemplated by the Contract has been completed satisfactorily.

(11) The contracting officer or designee shall perform all the duties of the owner on behalf of the Oregon State Board of Higher Education.

(12) The contracting officer or designee may execute change orders to Contracts as long as the scope of the contract is not altered materially by such change orders. Exceptions to this provision may be granted by the Vice Chancellor for Finance and Administration or designee.

(13) The Board of Higher Education or the Director of the Internal Audit Division may audit or investigate any Contract or retainer agreement executed under authority of this rule.

(14) The following procedures shall be used in soliciting, evaluating and rejecting or accepting Bids or Proposals for Contracts for repairs or Public Improvements:

(a) The provisions of sections (3), (4), (6), (7), (8), (10), (11), (13), (14), (22), (23), (24), and (27) of OAR 137-030-0000; sections (2) and (5) of 137-030-0010; 137-030-0012; sections (2) and (3) of 137-030-0030; sections (1), (2), and (4) of 137-030-0040; 137-030-0050 through 137-030-0085; 137-030-0100 through 137-030-0104; 137-030-0110; 137-030-0115(1); 137-030-0120; 137-030-0150; 137-030-0130; 137-040-0020; 137-040-0030; 137-040-0035; 137-040-0040; and 137-040-0045 effective January 1, 1995, shall be applicable to the bidding, awarding and administration of public contracts of the Oregon University System. (These may be found in the Oregon Attorney General's Model Public Contracting Rules Manual, January 1995);

(b) The Oregon University System reserves the right to reject any bid or proposal not in compliance with the Solicitation Documents, or with these rules, and to reject any or all Bids or Proposals upon a finding that it is in the public interest to do so;

(c) Low tie Bids are Bids that are responsive to all requirements and are identical in price, fitness, availability, and quality. Preference shall be given to the Bidder whose principal offices or headquarters are located in Oregon. If no Bidder is eligible for this preference, or if more than one Bidder is eligible for this preference, the Contract shall be awarded by drawing lots first among tied Oregon Bidders or, if there are no such Oregon Bidders, shall be awarded by drawing lots among all tied Bidders.

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

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 1-1993, f. & cert. ef. 2-5-93; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04; OSSHE 1-2005(Temp), f. 2-9-05, cert. ef. 2-

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10-05 thru 8-9-05; Administrative correction, 8-17-05; OSSHE 5-2005, f. & cert. ef. 8-24-05; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-050-0033

Change Orders

The contracting officer may delegate to each institution the authority to execute change orders or amendments to duly executed contracts for the repair of facilities, for capital improvements and for capital construction, in accordance with the following conditions:

(1) No change order or amendment changes the identity or overall scope of the work encompassed within the original contract;

(2) Sufficient funds are available within the construction contingency amount approved in the post-bid budget for the project to pay for the work contemplated by a change order or amendment;

(3) Approval of a change order or amendment will not result in a project exceeding the appropriation or limitation approved thereof by the Legislative Assembly or Emergency Board and, if required, released for construction purposes.

(4) All change orders and amendments executed on behalf of an institution shall be forwarded to the contracting officer immediately upon execution. No work contemplated by a change order will be commenced prior to its execution by the contracting officer or designee. The contracting officer may audit any and all change orders approved by the duly designated official of any college or university.

(5) The contracting officer may revoke delegated authority upon written notice to the president of the institution for which revocation is sought.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04; Administrative correction, 2-17-05; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-050-0040

General Purpose

(1) The successful bidder or proposer for a public improvement project approved by the Board of Higher Education shall have made good faith efforts to subcontract or establish joint ventures with or obtain materials to be used in performing the contract from minority, women and emerging small business enterprises.

(2) For purposes of this rule and OAR 580-050-0041 and 580-050-0042, minority, women and emerging small business enterprises are those certified as such by the Office of Minority, Women and Emerging Small Business at the bid or proposal closing date and time.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 14-1990, f. & cert. ef. 10-3-90; HEB 5-1992, f. & cert. ef. 4-10-92; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04; Administrative correction, 2-18-05; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-050-0041

Emerging Small Businesses

(1) The successful bidder or proposer for a public improvement project approved by the Board of Higher Education shall meet the project's goal, if any, for subcontracting with or obtaining materials to be used in performing the contract from emerging small businesses. The goals shall be set out in the specifications that accompany the project's invitation to bid, request for proposal(s) or request for qualifications.

(2) The goal for each project shall be based upon the nature of the project, its size and location, and the availability of emerging small businesses.

(3) Should a bidder or proposer fail to meet the requirements of section (1) of this rule, the bid or proposal shall be disqualified unless the bidder or proposer notifies the contracting officer or designee of the bidder's or proposer's good faith efforts by submitting in writing within 24 hours of the bid or proposal closing date and time:

(a) The identity of each emerging small business enterprise requested to submit bids, proposals and/or quotations;

(b) The amounts of any such bids, proposals and/or quotations;

(c) The identity of each emerging small business enterprise to be engaged as a subcontractor;

(d) The reason for rejection of an emerging small business enterprise whose bid, proposal, or quotation is equal to or lower than that of the subcontractor engaged or projected for that work;

(e) All other evidence of good faith efforts through performance of all of the actions described in section (4) of this rule.

(4) Proof of performance of the following actions will create a rebuttable presumption that the bidder or proposer has made good faith efforts;

conversely, failure of proof of such performance shall create a rebuttable presumption of lack of good faith efforts:

(a) The bidder or proposer attended any presolicitation or prebid meetings that were scheduled by the contracting agency to inform emerging small business enterprises of contracting and subcontracting, or material supply or other opportunities available on the project;

(b) The bidder or proposer identified and selected economically feasible units of the project that could be subcontracted to emerging small business enterprises in order to increase the likelihood of participation by such enterprises;

(c) The bidder or proposer advertised once in at least two of the following publications: general circulation, trade association, and trade-oriented, minority and women-focused publications, if any, concerning the subcontracting, material supply or other opportunities;

(d) The bidder or proposer solicited and provided written notice to a reasonable number of emerging small business enterprises identified from certified lists of such business enterprises provided or maintained by the Office of Minority, Women and Emerging Small Business, for the selected subcontractor or material supply or other work in sufficient time to allow the enterprises to participate effectively;

(e) The bidder or proposer followed up initial solicitations by contacting the emerging small business enterprises identified in subsection (d) to determine with certainty whether the enterprises were interested in such subcontracting, material supply or other opportunities;

(f) The bidder or proposer provided interested emerging small business enterprises with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply or other work;

(g) Where applicable, the bidder or proposer advised and made efforts to assist emerging small business enterprises in obtaining bonding, lines of credit or insurance required by the contracting agency or contractor;

(h) The bidder or proposer used the services of community organizations, contractor groups, state, and federal business assistance offices and other organizations identified by the Office of Minority, Women and Emerging Small Business that provide assistance in the recruitment and placement of emerging small business enterprises; and

(i) The bidder or proposer negotiated in good faith with emerging small business enterprises submitting bids, proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any bids, proposals or quotations prepared by any emerging small business enterprise. "Good faith" negotiating means engaging in good faith discussions with emerging small business enterprises about the nature of the work, scheduling, requirements for special equipment, opportunities for dividing work among the bidders and proposers and various subcontractors and the proposals/bids of the emerging small business enterprises, including sharing with them any cost estimates from the request for proposal or invitation to bid documents, if available.

(5) Should the bidder or proposer not make the good faith effort required in section (4) of this rule, proof of the following facts shall rebut the presumption that good faith efforts as required by OAR 580-050-0040(1) were not made by the bidder or proposer:

(a) The bidder or proposer qualifies as a certified emerging small business enterprise; or

(b) The bidder or proposer has engaged one or more certified emerging small business enterprises as subcontractors which meets or exceeds the goal of the work and discloses in writing with its bid or proposal the identity of those firms so engaged and the amount(s) of the contract to be subcontracted to such entities.

(6) The Vice Chancellor for Finance and Administration or designee shall decide, if necessary, whether good faith efforts have been made, pursuant to the criteria of section (4) of this rule.

(7) Any bidder or proposer whose bid or proposal has been rejected for noncompliance with the requirements of this rule may, within three days of the rejection of the bid or proposal, request the Office of Finance and Administration to reconsider the rejection, citing the error or misinterpretation of the documents that the bidder or proposer believes led to the incorrect rejection of its bid or proposal and providing all necessary documentation. Information received after the three-day period will not be accepted. The Office of Finance and Administration or designee reserves the right to require the bidder or proposer to divulge its records when a dispute occurs, regardless of whether they have been awarded the contract or whether a court action has been filed.

(8) The requirements of the prior sections do not apply if the bidder or proposer certifies that, if awarded the contract, it will not subcontract. As used in this section, "work" does not mean providing materials or supplies.

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(9) The Vice Chancellor for Finance and Administration or designee may audit or otherwise inspect the records of contractors to determine compliance by those contractors with commitments made in satisfaction of the requirements of this rule. Any contractor determined to have failed to fulfill such requirements may be subject to penalty, including suspension of any contract or debarment from bidding, proposing or performing work on any contract for the Oregon State Board of Higher Education for a period of up to three years. Before the Board imposes any such sanction, a contractor is entitled to a hearing as provided for in ORS 183.413, et seq.

(10) In the event a request for proposals, request for qualifications or other process other than competitive bidding is used to contract for capital construction work, the contract officer or designee shall require in the solicitation document or shall attempt to negotiate affirmative efforts on behalf of emerging small businesses similar to those outlined in sections (1) or (4) of this rule.

(11) The Board will evaluate annually the effects of this rule.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 14-1990, f. & cert. ef. 10-3-90; HEB 5-1992, f. & cert. ef. 4-10-92; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04; Administrative correction, 2-18-05; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-050-0042

Minority Business Enterprises and Women Business Enterprises

(1) The successful bidder or proposer for a public improvement project approved by the Board of Higher Education or its designee shall make a good faith effort to subcontract with or obtain materials to be used in performing the contract from minority and women business enterprises.

(2) Proof of performance of the following actions will create a rebuttable presumption that the bidder or proposer has made good faith efforts; conversely, failure of proof of such performance shall create a rebuttable presumption of lack of good faith efforts:

(a) The bidder or proposer attended any presolicitation or prebid meetings that were scheduled by the contracting agency to inform minority and women business enterprises of contracting and subcontracting, material supply or other opportunities available on the project;

(b) The bidder or proposer identified and selected economically feasible units of the project that could be subcontracted to minority and women small business enterprises in order to increase the likelihood of participation by such enterprises;

(c) The bidder or proposer advertised in general circulation, trade association, and trade-oriented, minority and women-focused publications, if any, concerning the subcontracting, material supply or other opportunities;

(d) The bidder or proposer solicited and provided written notice to a reasonable number of minority and women business enterprises identified from current certified lists of such business enterprises provided or maintained by the state Office of Minority, Women and Emerging Small Business, for the selected subcontracting or material supply, or other work in sufficient time to allow the enterprises to participate effectively;

(e) The bidder or proposer followed up initial solicitations by contacting the enterprises to determine with certainty whether the enterprises were interested in such subcontracting, material supply or other opportunities;

(f) The bidder or proposer provided interested minority and women business enterprises with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply, or other work;

(g) Where applicable, the bidder or proposer advised and made efforts to assist minority and women business enterprises in obtaining bonding, lines of credit or insurance required by the contracting agency or contractor;

(h) The bidder or proposer used the services of community organizations, contractor groups, state and federal business assistance offices and other organizations identified by the Office of Minority, Women and Emerging Small Business that provide assistance in the recruitment and placement of minority and women business enterprises; and

(i) The bidder or proposer negotiated in good faith with minority and women business enterprises submitting bids, proposals, or quotations and did not, without justifiable reason, reject as unsatisfactory any bids, proposals or quotations prepared by any minority or women business. "Good faith" negotiating means engaging in good faith discussions with minority or women businesses about the nature of the work, scheduling, requirements for special equipment, opportunities for dividing of work among the bidders, proposers, and various subcontractors and the proposals/bids of the minority

or women businesses, including sharing with them any cost estimates from the request for proposal or invitation to bid documents, if available.

(3) Should a bidder or proposer fail to meet the requirements of section (2) of this rule, the bid or proposal shall be disqualified unless the bidder or proposer notifies the Vice Chancellor for Finance and Administration or designee of the bidder's or proposer's good faith efforts by submitting in writing within 24 hours of the bid or proposal closing date and time:

(a) The identity of each minority and women business enterprise requested to submit bids, proposals, and/or quotations;

(b) The amounts of any such bids, proposals and/or quotations;

(c) The identity of each minority and women business enterprise to be engaged as a subcontractor;

(d) The reason for rejection of a minority and women business enterprise whose bid, proposal, or quotation is equal to or lower than that of the subcontractor engaged or projected for that work;

(e) All other evidence of good faith efforts through performance of all of the actions described in section (2) of this rule.

(4) Should the bidder or proposer not make the good faith effort required in section (2) of this rule, proof of the following facts shall rebut the presumption that good faith efforts as required by OAR 580-050-0040(1) were not made by the bidder or proposer:

(a) The bidder or proposer qualifies as a certified minority or women business enterprise or is an approved joint venture, including but not limited to a mentor-protégé relationship, which includes a minority or women enterprise as a partner in the joint venture; or

(b) The bidder or proposer has engaged one or more certified minority or women business enterprises as subcontractors that meet or exceed the recommended portion of the work and discloses in writing with its bid or proposal the identity of those firms so engaged and the amount(s) of the contract to be subcontracted to such entities: The recommended portion for each project shall be based upon the nature of the project, its size and location, and the availability of minority and women business enterprises.

(5) The Vice Chancellor for Finance and Administration or designee shall decide, if necessary, whether good faith efforts have been made pursuant to the criteria of this rule.

(6) Any bidder or proposer whose bid or proposal has been rejected for noncompliance with the requirements of this rule may, within three days of the rejection of the bid or proposal, request the Vice Chancellor for Finance and Administration to reconsider the rejection, citing the error or misinterpretation of the documents that the bidder or proposer believes led to the incorrect rejection of its bid or proposal and providing all necessary documentation. Information received after the three-day period will not be accepted. The Office of Finance and Administration reserves the right to require the bidders or proposers to divulge their records when a dispute occurs, regardless of whether they have been awarded a contract or whether a court action has been filed.

(7) The requirements of the prior sections do not apply if the bidder or proposer certifies that, if awarded the contract, it will not subcontract. As used in this section, "work" does not mean providing materials or supplies.

(8) The Vice Chancellor for Finance and Administration or designee may audit or otherwise inspect the records of contractors to determine compliance by those contractors with commitments made in satisfaction of the requirements of this rule. Any contractor determined to have failed to fulfill such requirements may be subject to penalty, including suspension of any contract or debarment from bidding, proposing or performing work on any contract for the Oregon State Board of Higher Education for a period of up to three years. Before the Board imposes any such sanction, a contractor is entitled to a hearing as provided for in ORS 183.413, et seq.

(9) In the event a request for proposals, request for qualifications or other process other than competitive bidding is used to contract for capital construction work, the Vice Chancellor for Finance and Administration or designee shall require affirmative efforts in its solicitation documents or shall attempt to negotiate affirmative efforts on behalf of minority and women business enterprises similar to those outlined in this rule.

(10) The Board will evaluate annually the effects of this rule.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 14-1990, f. & cert. ef. 10-3-90; HEB 5-1992, f. & cert. ef. 4-10-92; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04; Administrative correction, 2-18-05; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-050-0100

Board of Higher Education-Provided Housing

(1) Consistent with ORS 182.415, for the purpose of OAR 580-050-0100, the terms:

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(a) "Housing" includes single- and multiple-family dwellings, apartments and manufactured dwellings and manufactured dwelling pads, available on a monthly tenancy, but does not include dormitory facilities at any institution.

(b) "Dormitory" includes any facility that houses students.

(c) "Furnishings" includes furniture used in connection with the occupancy of a household and shall not be provided as part of any housing. Furnishings do not include rugs, draperies, range, refrigerator, washer, dryer or any item of furnishings received as a gift, nor does it include any furniture purchased prior to September 9, 1971, for the state-owned residence required in relation to the official duties of an institutional executive or the Chancellor.

(2) As required under ORS 182.425, the institutions within the Department of Higher Education shall collect a rental for housing provided to officers and employees based on the fair rental value as determined by a qualified appraiser certified under ORS 308.010 or licensed or certified under ORS 674.310, subject to any reductions therefrom authorized under ORS 182.435 as described in Section 7 of the Board's Internal Management Directives. Rental fees collected shall be credited to the appropriate account.

(3) Determination of fair rental value shall be reexamined periodically but not less frequently than once every five years, and the rental shall be adjusted annually by the change in real estate values for the affected community as determined by the Department of Higher Education.

(4) When an institution provides housing to an officer or employee, it shall notify the State System Office of Finance and Administration, Facilities Services, on the form supplied by Facilities Services, of these arrangements, including the basis for rental charge and such rental rate reductions as may be applicable. The reason for and amount of each specific reduction shall be detailed in such notification.

(5) The Office of Finance and Administration, Facilities Services, shall prepare a report indicating the fair rental value of each housing unit, the date of the most recent appraisal, and the amount of any reductions from the fair rental value and the reasons for the reductions. This report shall be available for public inspection.

Stat. Auth.: ORS 182.415, 182.425 & 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 9-1994, f. & cert. ef. 10-12-94; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04; Administrative correction, 2-18-05; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-050-0105

Properties Subject to Flood Hazards

(1) Flood hazards shall be evaluated in the administration of any construction program of buildings, structures, roads, or other facilities to minimize the exposure to potential flood damage and preclude the uneconomical, hazardous or unnecessary use of flood plains.

(a) National Flood Insurance Regulations and criteria shall apply to any plans for construction or development in a flood plain.

(b) Flood-proofing measures to existing facilities shall be made where budgets permit, to reduce flood damage potential.

(2) Flood hazards shall be evaluated in connection with lands or public properties proposed for disposal to other public instrumentalities or private interest to minimize future state expenditures for flood protection and flood disaster relief.

(a) Appropriate restrictions shall be imposed with respect to uses of the lands or properties for disposal.

(b) Appropriate allowance shall be made for any estimated loss in sales price resulting from the incorporation of use restrictions outlined in the disposal document.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 8-1980(Temp), f. & ef. 6-18-80; HEB 10-1980, f. & ef. 8-20-80; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04; Administrative correction, 2-18-05; Suspended by OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-060-0000

Authority

These rules establish the procedures that will be followed by Institutions of the Oregon University System to acquire, receive, hold, control, convey, sell, manage, operate, lease, lend, improve, and develop all real property given to any of the Institutions under the control of the Board by private donors or acquired by any other method or from any source, except for any structure, or asset encumbered by a certificate of participation.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-060-0005

Definitions

All capitalized terms in chapter 580, division 60 have the meanings set forth in OAR 580-061-0010 unless the context requires otherwise or except as stated.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-060-0010

Comprehensive Plan Coordination

Each of the Institutions will maintain a long-range campus development plan covering approved campus boundaries, including real property that is not contiguous to the main campus. The combined institutional plans will be known as the Oregon University System Comprehensive Plan. Institutional plans will conform to OAR chapter 660, division 30 of the Land Conservation and Development Commission, which includes, but is not limited to, conforming the Institutional plans to regulations of the applicable local jurisdiction. Institutional plans will be approved by the Institution President and by the Chancellor or designee. The Chancellor or designee will approve revisions to the campus boundaries.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-060-0015

Records

The Office of Capital Construction, Planning, and Budget of the Chancellor's Office will be the official record keeper for all documents that affect real property under the control of the Board. Documents affecting real property include, but are not limited to, all instruments that acquire, transfer, sell, or alter the character of land. All documents will be provided by Institutions to the Office of Capital Construction, Planning, and Budget in a timely manner.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-060-0020

Purchase of Real Property

All purchases will be in the name of the State of Oregon. All instruments acquiring title to real property must be executed by the Board President and Board Secretary in accordance with ORS 351.150. All purchases will be for the present or future development of the Institution.

(1) The Institution President has the authority to approve purchases of real property after obtaining at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value if the consideration is less than \$1,000,000. The Institution President must ensure that an environmental assessment has been completed and that any risk associated with the real property is reasonable under the circumstances and OUS Systemwide legislative expenditure limitation has been obtained prior to approving the purchase of real property.

(2) For the purchase of real property where the consideration exceeds \$1,000,000, the Institution President or designee must:

(a) Obtain at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value, and

(b) Obtain prior approval of the acquisition by the Chancellor or designee, and

(c) Complete an environmental assessment and confirm that any risk associated with the real property is reasonable under the circumstances, and

(d) Obtain Legislative limitation, if required.

(3) All purchases of real property will comply with the applicable requirements of ORS Chapter 270.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-060-0025

Gifts of Real Property

The Institution President may accept gifts of real property on behalf of the Board. The Institution President must ensure that an environmental assessment has been completed prior to accepting the gift of real property and that any risk associated with the real property is reasonable under the circumstances. Legal title to all real property gifted to the Institution must be taken and held in the name of the State of Oregon and executed by the Board President and Board Secretary.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

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580-060-0030

Condemnation

Acquisition of real property by condemnation will be conducted in accordance with ORS Chapter 35 and must be approved by the Board.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-060-0035

Sale of Real Property

(1) All instruments transferring title to real property must be executed by the Board President and Board Secretary.

(2) The Institution President has the authority to approve the sale of real property after obtaining at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value if the consideration is less than \$1,000,000.

(3) For the sale of real property where the consideration exceeds \$1,000,000, the Institution President must obtain at least one appraisal by a licensed and experienced real estate appraiser estimating the fair market value and must obtain prior approval of the sale by the Chancellor, or designee.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-060-0040

Easements

(1) All instruments granting or acquiring an easement must be executed by the Board President and Board Secretary.

(2) The Institution President or designee has the authority to approve acquisition or grant of an easement reasonably related to the operation of the Institution if the consideration does not exceed \$1,000,000.

(3) The Institution President or designee must obtain Chancellor, or designee approval for all other easement grants or acquisitions.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-060-0045

Use of Facilities for Other than Institutional Purposes

Institutions normally will not make available Institutional buildings and other facilities to individuals for essentially private use or to outside organizations, unless approved in Institutional policy or required by law. Exceptions will be made only if the proposed use is consistent with Institutional policies and missions and the individual or organization fully reimburses the Institution for all appropriate costs. The Institutional President or designee will confer with the OUS Controller's Division to determine compliance with bond restrictions.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-060-0050

Transfers of Interests in Real Property

(1) Private Activity Limitations: If an Institution intends to execute any transfer of an interest in real property owned by the Board or the right to use Board real property, including a lease or license, and either (a) the term of the transfer exceeds 50 days in total or (b) the arrangement was not set at fair market value, then prior to the execution of that transfer of interest in real property, the Institution President or designee will confer with the OUS Controller's Division to determine compliance with bond restrictions.

(2) Authority to Execute Agreements: The Institution President or designee is authorized to execute documents transferring such interests for real property owned or controlled by the Board or real property for the use of the Institution if the term of the agreement and all extensions do not exceed ten years or the consideration for the transfer of an interest does not exceed \$5 million over the term of the agreement. The Chancellor or designee may approve transfers of interest if the term of the agreement and all extensions do not exceed 15 years or the consideration for the transfer of an interest does not exceed \$15 million over the term of the agreement. All other transfers of interests for real property will be approved by the Chancellor or designee.

(3) Improvements to Board-Owned Property: The Institution President or designee will obtain prior approval of the Board for agreements permitting the construction on or renovation to Board-owned property if such improvements exceed \$5 million during the term of the agreement. To obtain approval from the Board, the Institution must specify where funding for operations and maintenance will come from.

(a) If the Institution permits construction on or renovation to Board-owned property, the Institution must approve all plans and specifications prior to the commencement of work and obtain record drawings upon termination of the agreement or completion of the work, whichever first occurs.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-060-0055

Naming Buildings

An Institution President is authorized to name buildings. No building or structure of the Oregon University System will be named after a living person. However, the Chancellor, or designee may make exceptions to this rule if a donor contributes a substantial share of the cost of construction or if other unusually meritorious reasons exist.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-060-0060

Board of Higher Education-Provided Housing

(1) Consistent with ORS 182.415 to 182.435, the Board will collect rent for housing provided to officers and employees. Each Institution will:

(a) Examine periodically, but not less frequently than once every five years, each rental unit's fair rental value. Fair rental value will be determined by a qualified appraiser certified under ORS 308.010 or licensed or certified under ORS 674.310. The rental rate will be adjusted annually to reflect changes in community real estate values, if any.

(b) Collect rent for such housing based on the fair rental value, subject to any rental rate reductions authorized in subsection (2).

(c) Deposit such rental income in an appropriate Institution account.

(d) Provide no furnishings except as authorized by ORS 182.415(1)

(e) Determine whether to provide or to what extent the Institution will provide utilities and services for each housing unit.

(2) Each Institution providing housing for officers or employees may reduce the rent charged, by up to 100 percent from the fair rental value based on the following factors:

(a) Rental reduction for Institution need provided.

(A) If residence in the housing unit is a job requirement, as evidenced by contract or position description and not offered as an incentive or a fringe benefit to the resident state employee — 50 percent reduction; or

(B) If residence in the housing unit is not a job-related requirement but it is a distinct advantage to the Institution to have the officer or employee live near the job in case of an emergency or for general protection of Board property in the area — 20 percent reduction; or

(C) If residence in the housing unit is not a job requirement and the only advantage to the Institution is to reduce the chance of vandalism and deterioration to a Board-owned or controlled residence — 10 percent reduction; or

(D) If residence in the housing unit is not a job requirement nor is it for the benefit of the Institution, but is solely for the benefit of the occupant — No reduction.

(b) Rental reduction for invasion of privacy.

(A) If the housing unit or a significant part of it is used for a public office or public business or is so located that invasion of privacy by the public or by guests invited for Institution-related activities is expected or usual — 30 percent reduction; or

(B) If the public is not invited and invasion of privacy is not the usual occurrence, but the residence location or architecture plainly indicates state ownership and there is little or no restriction of public or Institution client traffic — 20 percent reduction; or

(C) Invasion of privacy is an occasional or seasonal occurrence and there is some restriction to public traffic — 10 percent reduction; or

(D) Invasion of privacy is no more than would be expected for an average privately owned residence — No reduction.

(c) Rental reduction for isolation.

(A) If the housing unit is located in an isolated area, defined as being more than 50 miles distance or 90 minutes travel by automobile from the nearest full service community, or the travel conditions are usually severe or hazardous — 20 percent reduction. A full-service community is one with a supermarket, department store, medical doctor, dentist, church, school, etc; or

(B) If the housing unit is located 30 to 50 miles distance or 60 to 90 minutes travel by automobile from the nearest full-service community or the travel conditions are seasonally severe or hazardous — 15 percent reduction; or

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(C) If the housing unit is located 10 to 30 miles distance or 30 to 60 minutes travel time by automobile from the nearest full-service community, the travel conditions are only occasionally severe or hazardous — 10 percent reduction; or

(D) The housing unit is located within 10 miles and not over 30 minutes travel time by automobile from the nearest full-service community and the travel conditions are rarely severe or hazardous — No reduction.

(d) Rental reduction for unique conditions. Certain unique conditions may arise or exist in addition to those in subsections (a)–(c) above. Rent may be reduced as follows:

(A) To correct inequities between the fair rental value as determined in subsection (1) and the salary of the officer or employee occupying the residence — reduction to the extent necessary and reasonable;

(B) Because of unique conditions in the Board's title to the property (e.g., the Board's ownership is conditioned upon residence by a specified employee) — up to 100 percent of the fair rental value; and

(C) Other factors necessary for effective program management (cannot include factors reflecting only the convenience or comfort of an employee) — a reduction of up to 20 percent.

(3) At least once every five years, Institutions will prepare a report indicating the fair rental value of each housing unit, the date of the most recent appraisal, and the amount of any reductions from the fair rental value and the reasons for the reductions. This report will be available for public inspection.

Stat. Auth.: ORS 351ORS 182.415, 182.425 & 351.070

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0000

Code of Ethics

(1) The following Code of Ethics will apply to Oregon University System employees in relation to chapter 580, divisions 60, 61, 62, and 63. Employees will:

(a) Give first consideration to the objectives and policies of the Board, OUS, and the Institution;

(b) Strive to obtain the best value for expenditures;

(c) Fairly consider prospective Contractors insofar as state or federal statutes and institutional rules and policies require;

(d) Conduct business in an atmosphere of good faith;

(e) Demand honesty in representations made by prospective Contractors;

(f) Promote competition by encouraging the participation of Oregon businesses, emerging small and minority-owned and women-owned businesses, and Qualified Rehabilitation Facilities;

(g) Comply with the applicable provisions of ORS Chapter 244 and other applicable rules and policies on conflict of interest that may be more restrictive;

(h) Refrain from having financial interests incompatible with the impartial, objective, and effective performance of duties. Activities that may create a conflict of interest must be addressed in accordance with the procedures outlined in the Oregon University System's Internal Management Directives and other applicable rules and policies;

(i) Receive the written consent of the originator of proprietary ideas and designs before using them; and

(j) Foster fair, ethical, and legal trade practices.

(k) Execute the OUS Conflict of Interest Statement before any person may participate in the evaluation or selection of a Contractor or vendor under a Formal Procurement process.

(l) On an annual basis, sign a statement that the employee has reviewed and will comply with the OUS Code of Ethics.

(2) This code is for the Oregon University System's internal use only and creates no obligations enforceable by Contractors, Proposers, Bidders, or other parties doing business with an Institution, nor may it be used by Contractors, Proposers, Bidders, or other parties doing business with an Institution who are challenging actions taken by an Institution or its officers, employees, or agents. This code may not be the only statement on ethics applicable to an employee.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0005

Applicable Model Public Contract Rules

The Attorney General's Model Public Contract Rules adopted by the Oregon Attorney General pursuant to ORS 279A.065 are generally inapplicable to the contracting activities of Institutions unless specifically referenced and adopted herein.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0010

Definitions

The following Definitions will apply to chapter 580, divisions 60, 61, 62, and 63, unless the context requires otherwise:

(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of the Solicitation Document. Addenda will be labeled as such and distributed to all interested Bidders or Proposers.

(2) "Award" means, as the context requires, identifying the Entity with whom the Institution intends to enter into a Contract following the resolution of any protest of the selection of that Entity and the completion of all Contract negotiations.

(3) "Bid" means an offer, binding on the Bidder and submitted in response to a Solicitation Document.

(4) "Bidder" means an Entity that submits a Bid in response to a Solicitation Document.

(5) "Board" means the Oregon State Board of Higher Education.

(6) "Change Order" or "Contract Amendment" means a written order issued by an Institution to the Contractor requiring a change in the Work within the general scope of the original Contract.

(7) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Bids or Proposals.

(8) "Competitive Process" means the process of procuring goods and services and construction related services by fair and open competition, under varying market conditions, with the intent of minimizing opportunities for favoritism and assuring that Contracts are awarded equitably and economically using various factors in determining such equitability and economy.

(9) "Contract" means a contract for sale or other disposal, or a purchase, lease, rental, or other acquisition, by an Institution of personal property, services, including personal or professional services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Contract" does not include grants. "Contract" may also mean a purchase order, Price Agreement, or other Contract document in addition to an Institution's Solicitation Document and the accepted portions of a Bid or Proposal.

(10) "Contract Officer" means the Vice President for Finance and Administration or his or her designee at an Institution or the Vice Chancellor for Finance and Administration or his or her designee with the authority to negotiate and execute Contracts.

(11) "Contract Price" means, as the context requires, the maximum monetary obligation that an Institution either will or may incur under a Contract, including bonuses, incentives and contingency amounts, Addenda, Change Orders, or approved alternates, if the Contractor fully performs under the Contract.

(12) "Contractor" means the Entity awarded a Contract to furnish an Institution goods, services, or Work.

(13) "Days" means calendar days, including weekdays, weekends, and holidays, unless otherwise specified.

(14) "Disadvantaged Business Enterprise" means a small business concern as defined in ORS 200.005.

(15) "Disqualification or Disqualify" means the preclusion of an Entity from contracting with an agency of the State of Oregon in accordance with OAR 580-061-0160.

(16) "Electronic Bid or Proposal" means a response to a Solicitation Document submitted to an Institution via the World Wide Web or some other internet protocol.

(17) "Emergency" means an unexpected, serious situation that creates a significant risk of loss, damage, interruption of service, or threat to the public health or safety that requires prompt action to remedy the condition.

(18) "Emerging Small Business" means an Emerging Small Business as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.

(19) "Entity" means a natural person capable of being legally bound, sole proprietorship, corporation, partnership, limited liability company or partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to Contract, or a government or governmental subdivision.

(20) "Facsimile" means a document that has been transmitted to and received by an Institution in a format that is capable of being received via a device commonly known as a facsimile machine.

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(21) "Grant" means:

(a) An agreement under which an Institution receives money, property, or other assistance, including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Institution and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which an Institution provides money, property, or other assistance, including, but not limited to, federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Institution is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions.

(c) "Grant" does not include a Public Improvement Contract or a Contract for Emergency work.

(22) "Institution" means a university under the authority of the Board, including the Chancellor's Office.

(23) "Invitation to Bid" (ITB) means a Solicitation Document for the solicitation of competitive, written, signed, and sealed Bids in which Specifications, price, and delivery (or project completion) are the predominant award criteria.

(24) "Minority Business Enterprise" means a Minority Business Enterprise as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.

(25) "Opening" means the date, time, and place specified in the Solicitation Document for the public opening of written sealed Bids or Proposals.

(26) "Owner" means the State of Oregon acting by and through the Board, in its own right or on behalf of one if its Institutions as identified in the Solicitation Document, also known as the Oregon University System (OUS).

(27) "President" means the president of one of the Institutions and, in the case of the Chancellor's Office, the Chancellor. Where the term "Institution President" is used, it refers to the president of the Institution at issue.

(28) "Personal or Professional Services Contract" means a Contract with an Entity whose primary purpose is to acquire specialized skills, knowledge, and resources in the application of technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, consultant, broadcaster or artist (including a photographer, filmmaker, painter, weaver, or sculptor). "Personal or Professional Services Contract" under this definition does not include an architect, engineer, planners, land surveyors, appraisers, construction managers, and similar professional consultants for construction work.

(29) "Price Agreement" means a binding nonexclusive agreement in which the Contractor agrees to provide specific items or services to an Institution at a set price during a specified period of time.

(30) "Proposal" means a binding competitive offer submitted in response to a Request for Proposals.

(31) "Proposer" means an Entity that submits a Proposal in response to a Request for Proposals.

(32) "Public Improvement" means a project for construction, reconstruction, or major renovation on real property by or for an Institution. "Public Improvement" does not include:

(a) Projects for which no funds of an Institution are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(33) "Public Improvement Contract" means a Contract for a Public Improvement. "Public Improvement Contract" does not include a Contract for Emergency work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(34) "Public Work" as defined by the Bureau of Labor and Industries (BOLI) includes, but is not limited to, roads, highways, buildings, structures, and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by an Institution or the Board to serve the public interest but does not include the

reconstruction or renovation of privately owned property that is leased by the Board or an Institution.

(35) "Qualified Rehabilitation Facility" means a nonprofit activity center or rehabilitation facility authorized by the Oregon Department of Administrative Services to provide goods or services in accordance with ORS 279.835 et seq.

(36) "Request for Information (RFI)" means a Solicitation Document seeking information regarding products or services that an Institution is interested in procuring.

(37) "Request for Proposals (RFP)" means a Solicitation Document to obtain written, competitive Proposals to be used as a basis for making an acquisition or entering into a Contract when price will not necessarily be the predominant award criteria.

(38) "Request for Qualifications (RFQ)" means a Solicitation Document issued by an Institution to which interested Contractors respond in writing by describing their experience with and qualifications to provide the services, personal services or architectural, engineering or land surveying services, or related services described in the Solicitation Document.

(39) "Responsible Bidder or Proposer" means an Entity that demonstrates their ability to perform satisfactorily under a Contract by meeting the applicable standards of responsibility outlined in OAR 580-061-0130.

(40) "Responsive Bid or Proposal" means a Bid or Proposal that has substantially complied in all material respects with the criteria outlined in a Solicitation Document.

(41) "Retainer Contract" means a Contract by which, pursuant to a Request for Proposals or Invitation to Bid, multiple Contractors are authorized to provide specific supplies or equipment to or perform specific services for an Institution(s). Contractors on a Retainer Contract may provide goods or services on a non-exclusive and as-needed basis.

(42) "Signed or Signature" mean any Written mark, word, or symbol that is made or adopted by an Entity with the intent to be bound and that is attached to or logically associated with a Written document to which the Entity intends to be bound.

(43) "Single Seller" means the only Contractor of a particular product or service reasonably available.

(44) "Solicitation Document" means an Invitation to Bid, Request for Proposals, Request for Qualifications or any other written document issued or posted on the OUS procurement website by an Institution that outlines the required Specifications necessary to submit a Bid, Proposal, or other response.

(45) "Specifications" means a description of the physical or functional characteristics, or of the nature of the goods or services, including any requirement for inspecting, testing, or preparing the goods or services for delivery and the quantities or qualities of the goods or services to be furnished under a Contract. Specifications generally will state the result to be obtained and may describe the method and manner of performance.

(46) "Women Business Enterprise" means a Women Business Enterprise as defined in ORS 200.005 and that maintains a current certification issued by the Oregon Department of Consumer and Business Services.

(47) "Work" means the furnishing of all materials, equipment, labor, transportation, services, and incidentals necessary to successfully complete any individual item or the entire Contract and carrying out and completion of all duties and obligations imposed by the Contract.

(48) "Written or Writing" means letters, characters, and symbols inscribed on paper by hand, print, type, or other method of impression intended to represent or convey particular ideas or means. "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters, and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0015

Purchasing and Contract Records

(1) Institutions will maintain records relating to all Institutional purchasing and contracting transactions in accordance with the requirements of the Secretary of State and OUS administrative rule.

(2) Documentation of all purchasing and contracting transactions will be made available for inspection by the public as outlined in applicable public records laws.

(3) Institutions will maintain records relating to all Institutional purchasing and contracting transactions that may include:

(a) An executed Contract and any amendments or Change Orders;

(b) The record of the actions used to develop the Contract;

ADMINISTRATIVE RULES

- (c) A copy of the Solicitation Document, if any;
- (d) Any required findings or statement of justification for the selection of the Contractor or the procurement method used;
- (e) The record of any negotiation of the Specifications and results;
- (f) All information describing how the Contractor was selected, including the basis for awarding the Contract;
- (g) The names of Entities and cost estimates considered.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0020

Designation of Contract Officers

Each Institutional Vice President for Finance and Administration or the Vice Chancellor for Finance and Administration will designate staff authorized to enter into Contracts and Public Improvement Contracts for the Institution.

(1) Institutions will maintain a list identifying Contract Officers and describing the types and Contract Price of Contracts and Public Improvement Contracts they are authorized to enter into. Institutions will provide an updated list annually to the Chancellor's Office. The Vice Chancellor for Finance and Administration may designate staff authorized to enter into Contracts and Public Improvement Contract on behalf of all Institutions.

(2) Contracts or Public Improvement Contracts entered into by individuals not designated as authorized Contract Officers will be voidable at the sole discretion of the Institution. Institutions may take appropriate action in response to execution of Contracts contrary to this rule. Such actions include, but are not limited to, providing educational guidance, imposing disciplinary measures, and holding individuals personally liable for such Contracts.

(3) Authorized Contract Officers will be responsible for ensuring that the proper procedures are followed as outlined in chapter 580, Divisions 60, 61, 62, and 63.

(4) Unless otherwise specified in chapter 580, divisions 60, 61, 62, and 63, the Contracting Officer will perform all the duties of the Owner on behalf of the Board.

(5) The Institution President may, by Written agreement with the President of another Institution or the Chancellor, and after notice to the Chancellor, transfer such delegation to a person at another Institution.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0025

Policy Governing the Acquisition of Goods and Services available from Qualified Rehabilitation Facilities

Institutions will purchase goods and services from Qualified Rehabilitation Facilities in accordance with the provisions of ORS 279.835 to 279.855 and applicable administrative rules.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0030

Affirmative Action; General Policy

(1) The general policy of OUS Institutions will be to expand economic opportunities for Minority Business Enterprises, Women Business Enterprises, and Emerging Small Businesses by offering them the contracting and subcontracting opportunities available through Institution Contracts. Notice of all Contract procured through a Competitive Process will be provided to the Advocate for Minority, Women, and Emerging Small Business, unless otherwise provided, using the OUS procurement website. Institutions are encouraged to unbundle contracts, when appropriate, to expand contract opportunities for Minority, Women, and Emerging Small Businesses and Oregon based businesses.

(2) OUS will not knowingly contract with or procure goods or services from any Entity that discriminates on the basis of age, disability, national origin, race, marital status, religion, sex, or sexual orientation.

(3) Bidders and Proposers will certify, as part of the Bids or Proposals that such Bidder or Proposer has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts.

(4) On an annual basis, Institutional Presidents will report to the Board statistical information regarding the number of Contracts awarded and the cumulative dollar amount of Contracts awarded to Minority Business Enterprises, Women Business Enterprises, Emerging Small Businesses, and Oregon-based businesses. The report will include informa-

tion describing Institutional programs or initiatives to expand contracting opportunities to Minority, Women, Emerging Small Businesses, and Oregon based businesses.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0035

Emerging Small Business Program

(1) The Board encourages participation of Emerging Small Businesses by creating an Emerging Small Business Program. The Emerging Small Business Program is limited to businesses that meet the definition in ORS 200.005(3) and that maintain a current certification issued by the Oregon Department of Consumer and Business Services. When conducting procurements, Institutions may implement the Emerging Small Business Program by methods including, but not limited to:

(a) Priority of Contract Award. In the event of a tie low Bid, when price is the sole determinative factor, give priority to a certified Emerging Small Business;

(b) Exclusive Emerging Small Business Opportunities. Institutions have the authority to create opportunities that are only open to certified Emerging Small Businesses. When an Institution issues a Solicitation Document, the Institution may determine that it is in the Institution's interest to limit the opportunity to only qualified and certified Emerging Small Businesses.

(c) Evaluation Criteria. An Institution may identify in a Solicitation Document that it will award additional evaluation points based on certified Emerging Small Business status.

(2) For Construction Related Services where price is the determinative factor, if a Responsible Emerging Small Business' Responsive Bid is within one percent of the lowest Responsible Responsive Bid, the Institution will award the Contract to the Emerging Small Business.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0040

Sexual Harassment Policy

All Contractors will be notified that the Board has adopted policies applicable to Contractors that prohibit sexual harassment and that the Contractor's company and employees are required to adhere to the Institution's policy prohibiting sexual harassment in their interactions with members of the Institution's community.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0045

Insurance or Bond Requirements

All Contractors will provide and maintain insurance or bonding as may be required by the Institution. Such insurance or bonding will remain in force throughout the term of the Contract, including any extensions.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0050

Interest on Overdue Charges

The policy of the Board is that an Institution pay any overdue account charge, in accordance with ORS 293.462, incurred by an Institution when payment for goods and services have not been reasonably made.

(1) Overdue claims will be those that have not been paid within 45 days from the latest of the following dates: The date of the receipt of the accurate invoice, the date of the initial billing statement if no invoice is received, the date all goods have been received, or the date the claim is made certain by agreement of the parties or by operation of law. However, overdue account charges will not accrue on any purchases made by an Institution during time of civil emergency or in the event of a natural disaster that prevents the timely payment of accounts. In such instances, accounts will be paid in as timely a manner as possible.

(2) The maximum overdue charge incidental to procurement of the goods or services will be at a rate of two-thirds of one percent per month, but not more than eight percent per annum.

Stat. Auth.: ORS 351
Stats. Implemented: ORS 293.462
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

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580-061-0055

Invitation to Bid Required Provision

If an Invitation to Bid is issued for a Contract for goods or services, the Institution will ensure that the following statement is contained in the Invitation to Bid: "Contractors will use recyclable products to the maximum extent economically feasible in the performance of the Contract."

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0060

Basis for Awarding Contracts

Institutions will select Contractors and award Contracts based on such factors as are identified in the Solicitation Document and such other factors as are reasonable under the circumstances.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0065

Contract Amendments (Including Change Orders and Extra Work) and Expired Contracts

An amendment for additional Work or goods that is reasonably related to the scope of Work under the original Contract, including Change Orders, extra work, field orders, or other change in the original Specifications that increases the original Contract Price or length of time, may be made with the Contractor without using a Competitive Process provided that the amendment does not materially alter such a Contract. An amendment that extends the Contract past the period set out in the Solicitation Document for anything other than completion of the Work contemplated in the original Contract as extended, will require a new Competitive Process, unless approved by the Vice President for Finance and Administration or Vice Chancellor for Finance and Administration for good cause. Expired Contracts may be revived and reinstated upon the approval of the Vice President for Finance and Administration or Vice Chancellor for Finance and Administration or their designees, subject to receiving all required approvals.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0070

Bids or Proposals are Offers

(1) Offer and Acceptance. The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract that will be binding upon the Bidder or Proposer for thirty (30) days, unless a different time frame is specified in the Solicitation Document. An Institution's award of the Contract constitutes acceptance of the offer and binds the Bidder or Proposer.

(2) The Bid or Proposal will be a complete offer and fully responsive to the Solicitation Document, unless Bidders or Proposers are specifically authorized by the Solicitation Document to take exceptions or to leave terms open to negotiation.

(3) Unless expressly authorized by the Solicitation Document, Bidders or Proposers will not make their Bids or Proposals contingent upon the Institution's acceptance of Specifications or contract terms that conflict with or are in addition to those in the Solicitation Document.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0075

Facsimile and Electronic Bids and Proposals

(1) Institutions may authorize submission of Bids or Proposals through facsimile or electronic methods if:

(a) The Solicitation Document permits submission via facsimile or electronic means; and

(b) The Institution establishes methods of receiving, identifying, recording, and preserving the "sealed" requirement of the Competitive Process.

(c) Bids or Proposals submitted through facsimile and electronic methods must contain Written signatures indicating intent to be bound by the offer.

(2) Institutions may execute or open electronic submissions to verify receipt of documents prior to the Closing, but will not verify responsiveness.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0080

Bid or Proposal Submissions

(1) Identification of Bids or Proposals. To ensure proper identification and special handling, Bids or Proposals will be submitted in a sealed envelope appropriately marked or in the envelope provided by the Institution, whichever is applicable. The Institution will not be responsible for the proper identification and handling of Bids or Proposals not submitted in the designated manner or format as required in the Solicitation Document.

(2) Receipt of Bids or Proposals. It is the Bidder's or Proposer's responsibility to ensure that Bids or Proposals are received by the Institution at the required delivery point, prior to the Closing as indicated in the Solicitation Document, regardless of the method used to submit or transmit the Bid or Proposal.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0085

Pre-Bid and Pre-Proposal Conferences

(1) Pre-Bid or pre-Proposal conferences may be scheduled. Each pre-Bid or pre-Proposal conference will be described in the Solicitation Document as "voluntary" or "mandatory." If such a conference is designated as "mandatory," a Bidder or Proposer must attend in order to submit a Bid or Proposal.

(2) If the Bidder or Proposer is an individual, the Bidder or Proposer may authorize a representative other than himself/herself to attend the pre-Bid or pre-Proposal conference.

(3) Statements made by Institutional representatives at the pre-Bid or pre-Proposal conference will not be binding unless a Written Addendum to the Solicitation Document is issued.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0090

Bid or Proposal Security

(1) The Institution may require in the Solicitation Document submission of a Bid or Proposal security. Security includes, but is not limited to, a surety bond from a surety company authorized to do business in the state of Oregon, cashier's check, certified check, or savings and loan secured check.

(2) The Bid or Proposal security of all unsuccessful Bidders or Proposers will be returned or released after a Contract has been executed and a performance bond provided (if such a bond is required), or after all Bids or Proposals have been rejected.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0095

Addenda to Solicitation Document

(1) The Institution may change a Solicitation Document by Written Addenda. Institutions will make reasonable efforts to notify potential Bidders or Proposers of such Written Addenda by methods that may include, but are not limited to, publication of the Written Addenda on the OUS procurement website or requiring submission of a notice of interest by potential Bidders or Proposers to receive Addenda.

(2) The Institution will issue the Written Addenda within a reasonable time prior to Closing to allow prospective Bidders or Proposers to consider the Addenda in preparing their Bids or Proposals. The Institution may extend the Closing if it determines prospective Bidders or Proposers need additional time to review and respond to Addenda.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0100

Clarification of Solicitation Document and Requests for Change

Unless a different deadline is specified in the Solicitation Document, requests for clarification or change of the Solicitation Document must be received by the Institution in writing at least ten (10) days prior to the Closing.

(1) Such request for clarification or change will include the reasons for the clarification or change, and any proposed changes to Specifications or provisions.

(2) The Institution will consider all requests for clarification or change and, if appropriate, amend the Solicitation Document by issuing Addenda.

Stat. Auth.: ORS 351

ADMINISTRATIVE RULES

Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0105

Pre-Closing Modifications or Withdrawal of Bids or Proposals

(1) Modifications. A Bidder or Proposer may modify its Bid or Proposal in Writing prior to the Closing. Any modification must include a statement that the modification amends and supersedes the prior Bid or Proposal.

(2) Withdrawals. A Bidder or Proposer may withdraw its Bid or Proposal by Written notice submitted on the Bidder or Proposer's letterhead, signed by an authorized representative of the Bidder or Proposer, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Institution prior to the Closing. The Bidder or Proposer, or authorized representative of the Bidder or Proposer, may also withdraw its Bid or Proposal in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Institution.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0110

Receipt, Opening, and Recording of Bids and Proposals

(1) Receipt. An Institution will electronically or mechanically time-stamp or hand-mark each Bid or Proposal and any modification upon receipt. Except as provided in OAR 580-061-00075(2) the Institution will not open the Bid or Proposal or modification, but will store it in a secure place until Opening. If the Institution inadvertently opens a Bid or Proposal or a modification prior to the Opening, the Institution will reseal and store the opened Bid or Proposal or modification until the Opening. The Institution will document the resealing for the solicitation file (e.g., "Institution inadvertently opened the Bid/Proposal due to improper identification of the Bid/Proposal.").

(2) Opening and Recording. An Institution will publicly open Bids or Proposals including any modifications made to the Bid or Proposal. Unless otherwise specified in the Solicitation Document, the name of the Entity submitting a Bid or Proposal will be the only information that may be made public until notice of the intent to Award or an Award has been issued.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0115

Late Bids and Proposals, Late Withdrawals, and Late Modifications

Any Bid or Proposal, modification, or withdrawal received after the Closing is late. An Institution will not consider late Bids, Proposals, modifications, or withdrawals except as permitted in OAR 580-061-0120.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0120

Mistakes

(1) Generally. To protect the integrity of the Competitive Process and to assure fair treatment of Bidders and Proposers, an Institution should carefully consider whether to permit waiver, correction, or withdrawal for certain mistakes.

(2) Institution Treatment of Mistakes. An Institution will not allow a Bidder or Proposer to correct or withdraw a Bid or Proposal for an error in judgment. If the Institution discovers certain mistakes in a Bid or Proposal after Opening, but before award of the Contract, the Institution may take the following action:

(a) An Institution, in its sole discretion, may waive or permit a Bidder or Proposer to correct a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Bid or Proposal or an insignificant mistake that can be waived or corrected without prejudice to other Bidders or Proposers. Examples of minor informalities include a Bidder or Proposer's failure to:

(A) Return the correct number of Signed Bids or Proposals or the correct number of other documents required by the Solicitation Document; or

(B) Sign the Bid or Proposal in the designated block, provided a Signature appears elsewhere in the Bid or Proposal, evidencing an intent to be bound; or

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided it is clear on the face of the Bid or Proposal that the Bidder or Proposer received the Addendum and intended to be bound by its terms, or the Addendum involved did not affect price, quality, or delivery.

(b) An Institution may correct a clerical error if the error is evident on the face of the Bid or Proposal or other documents submitted with the Bid or Proposal and the Bidder's or Proposer confirms the Institution's correction in Writing. A clerical error is a Bidder or Proposer's error in transcribing its Bid or Proposal. Examples include, but are not limited to, typographical mistakes, errors in extending unit prices, transposition errors, and arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations. In the event of a discrepancy, unit prices will prevail over extended prices.

(c) An Institution may permit a Bidder or Proposer to withdraw a Bid or Proposal after Closing based on one or more clerical errors in the Bid or Proposal only if the Bidder or Proposer shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected under subsection (b) of this subsection;

(D) That the Bidder or Proposer acted in good faith in submitting a Bid or Proposal that contained the claimed error and in claiming that the alleged error in the Bid or Proposal exists;

(E) That the Bidder or Proposer acted without gross negligence in submitting a Bid or Proposal that contained a claimed error;

(F) That the Bidder or Proposer will suffer substantial detriment if the Institution does not grant it permission to withdraw the Bid or Proposal;

(G) That the Institution's or the public's status has not changed so significantly that withdrawal of the Bid or Proposal will work a substantial hardship on the Institution or the public it represents; and

(H) That the Bidder or Proposer promptly gave notice of the claimed error to the Institution.

(d) The criteria in subsection (2)(a) of this rule will determine whether an Institution will permit a Bidder or Proposer to withdraw its Bid or Proposal after Closing. These criteria also will apply to the question whether an Institution will permit a Bidder or Proposer to withdraw its Bid or Proposal without forfeiture of its Bid bond (or other Bid security) or without liability to the Institution based on the difference between the amount of the Bidder's or Proposer's Bid or Proposal and the amount of the Contract actually awarded by the Institution, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer or by resort to a new solicitation.

(3) Rejection for Mistakes. The Institution will reject any Bidder or Proposer in which a mistake is evident on the face of the Bid or Proposal and the intended correct Bid or Proposal is not evident or cannot be substantiated from documents submitted with the Bid or Proposal.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0125

Low Tie Bids

(1) Definition. Low Tie Bids are low tie Responsive Responsible Bidders that are identical in price, fitness, availability, and quality and that meet all the requirements and criteria set forth in the Solicitation Document.

(2) Award. In the event of a Low Tie Bid, the Institution will award the Contract based on the following order of precedence:

(a) An Emerging Small Business that meets the definition in ORS 200.005(3) and that maintains a current certification issued by the Oregon Department of Consumer and Business Services;

(b) An Entity whose principal offices or headquarters are located in Oregon;

(c) If neither subsection (a) or (b) apply, award of the Contract will be made by drawing lots.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0130

Rejection of Individual Bids or Proposals and Bidders or Proposers

(1) An Institution may reject, in whole or in part, any Bid or Proposal not in compliance with all prescribed Bid or Proposal procedures, Contract provisions, and Specifications contained in the Solicitation Document or if upon written finding by the Institution that it is in the public interest to do so.

(2) Reasons for rejection. An Institution may reject a Bid or Proposal upon the Institution's findings that include, but are not limited to, the Bid or Proposal:

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(a) Is contingent upon the Institution's acceptance of terms and conditions that differ from the Solicitation Document; or

(b) Takes exception to the terms and conditions (including Specifications) set forth in the Solicitation Document; or

(c) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law; or

(d) Offers goods or services that fail to meet the Specifications of the Solicitation Document; or

(e) Is late; or

(f) Is not in substantial compliance with the Solicitation Document; or

(g) Is not in substantial compliance with all prescribed solicitation procedures; or

(h) Does not include the Bid or Proposal security as required by the Solicitation Document; or

(i) Does not include an executed certification of non-discrimination in compliance with 580-061-0035 and compliance with Oregon tax laws.

(3) An Institution may reject a Bidder or Proposer upon the Institution's findings that include, but are not limited to, the Bidder or Proposer:

(a) Has not met any required mandatory prequalification;

(b) Has been disqualified pursuant to OAR 137-046-0210(3) (Disadvantaged Business Enterprise Disqualification);

(c) Has not met the requirements of the Emerging Small Business Program created in OAR 580-061-0035, if required in the Solicitation Document.

(d) Being submitted by an Entity that has been debarred in accordance with ORS 279B130 or 279C.440;

(e) Has been declared ineligible by the Commissioner of Bureau of Labor and Industries under ORS 279C.860;

(f) Has within the last five years been found, in a civil, criminal, or administrative proceeding, to have committed or engaged in fraud, misrepresentation, price-rigging, unlawful anti-competitive conduct, or similar behavior;

(g) Is non-Responsible. Bidders or Proposers are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Institution must have information that indicates that the Bidder or Proposer meets the applicable standards of Responsibility. To be a Responsible Bidder or Proposer, the Institution may consider:

(A) If the Bidder or Proposer has appropriate financial, material, equipment, facility, and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the Bidder or Proposer to meet all contractual responsibilities;

(B) If the Bidder or Proposer has a satisfactory record of contract performance. The Institution may consider both private and public contracts in determining responsible performance under a contract;

(C) If the Bidder or Proposer has a satisfactory record of integrity. A Bidder or Proposer may lack integrity if an Institution determines the Bidder or Proposer demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a state agency. An Institution may find a Bidder or Proposer non-Responsible based on the lack of integrity of any person having influence or control over the Bidder or Proposer (such as a key employee of the Bidder or Proposer that has the authority to significantly influence the Bidder's or Proposer's performance of the Contract or a parent company, predecessor or successor person);

(D) If the Bidder or Proposer is qualified legally to Contract with the Institution;

(E) If the Bidder or Proposer has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Bidder or Proposer fails to promptly supply information requested by the Institution concerning responsibility, the Institution may base the determination of responsibility upon any available information or may find the Bidder or Proposer non-Responsible.

(4) Form of Business Entity. For purposes of this rule, the Institution may investigate any Entity submitting a Bid or Proposal. The investigation may include the Entity's officers, directors, owners, affiliates, or any other person acquiring ownership of the Entity to determine application of this rule.

(5) Notice. If a Bidder or Proposer or a Bid or Proposal is rejected in accordance with this rule, the Institution will provide written notice of such rejection to the Bidder or Proposer. The notice will include the grounds for rejection and a statement of the Bidder's or Proposer's appeal rights and applicable appeal deadlines.

(a) If a Bidder or Proposer wishes to appeal the decision to reject the Bidder or Proposer or Bid or Proposal, the Bidder or Proposer must notify the Institution, in Writing, within three Days after receipt of the notification.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0135

Rejection of All Bids or Proposals

(1) Rejection. An Institution may reject all Bids or Proposals for good cause upon a Written finding that it is in the public interest to do so. Notification of rejection of all Bids or Proposals, along with the good cause justification and finding of public interest, will be sent to all who submitted a Bid or Proposal.

(2) Criteria. The Institution may reject all Bids or Proposals based upon the following criteria:

(a) The content of or an error in the Solicitation Document or the procurement process unnecessarily restricted competition for the Contract;

(b) The price, quality, or performance presented by the Bidders or Proposers are too costly or of insufficient quality to justify acceptance of any Bid or Proposal;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the Competitive Process;

(d) Causes other than legitimate market forces threaten the integrity of the Competitive Process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0140

Disposition of Bids or Proposals if Solicitation Cancelled

(1) Prior to Bid or Proposal Opening. When a solicitation is cancelled prior to Opening, all Bids or Proposals received will be returned to Bidders or Proposers unopened if submitted in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Bid or Proposal will be opened to determine the source and then returned to the sender.

(2) After Bid or Proposal Opening. When all Bids or Proposals are rejected, the Bids or Proposals received will be retained and become part of the Institution's permanent solicitation file.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0145

Protest of Contractor Selection, Contract Award

(1) The purpose of this rule is to require adversely affected or aggrieved Bidders or Proposers on an Institution solicitation to exhaust all avenues of administrative review and relief before seeking judicial review of the Institution's selection or Award decision.

(2) Types of Protests. The following matters may be protested:

(a) A determination of responsibility or lack thereof;

(b) A determination of responsiveness or lack thereof;

(c) The rejection of a Bid or Proposal;

(d) The content of a Solicitation Document;

(e) The selection of one or more Contractors. A protest may be submitted only by an Entity that can demonstrate that it has been or is being adversely affected by an Institution decision or the content of a Solicitation Document.

(3) Delivery. Unless otherwise specified in the Solicitation Document, a Bidder or Proposer must deliver a Written protest to the Institution within seven (7) Days after the Award of a Contract or issuance of the notice of intent to Award the Contract, whichever occurs first. Protests must be clearly marked on the outside of the envelope with the title or the number of the Bid or Proposal and that it is a protest to ensure that it is recognized and recorded.

(4) Content of Protest. A Bidder's or Proposer's protest must fully specify the grounds for the protest and include all evidence that the protester wishes the Vice Chancellor for Finance and Administration, Institution Vice President for Finance and Administration, or designee to consider. Failure to include any ground for the protest or any evidence in support of

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it will constitute a final, knowing, and voluntary waiver of the right to assert such ground or evidence. A protest must include a conspicuous marking identifying the type and nature of the protest.

(5) A protest of a Solicitation Document may be made only if a term or condition of the Solicitation Document, including, but not limited to, Specifications or Contract terms violates applicable law. The Institution will (upon altering the Solicitation Document in response to a protest) promptly transmit the revised Solicitation Document to all Bidders and Proposers and extend the Closing where appropriate. The Institution may choose, in its sole discretion, to close the procurement process without making an Award and begin a new procurement process.

(6) A protest of the selection of one or more Contractors requires the protestor to demonstrate, as applicable;

(a) That all higher-ranked Bidders or Proposers were ineligible for selection or that the protestor would have been "next in line" to receive the Award and was eligible for selection; and

(b) That the Bidder or Proposer selected was ineligible.

(c) That the Single Seller selected is not the only Contractor reasonably available to provide the personal or professional services, goods, services, or Construction Related Services.

(7) A protest of the rejection of a Bid or Proposal must demonstrate that the Institution's decision was materially in error or that the Institution committed a material procedural error and that any such error, alone or in combination with other errors, was a "but for" cause of the rejection.

(8) Response. The Vice Chancellor for Finance and Administration or the Institution Vice President for Finance and Administration, or their designee, will have the authority to settle or resolve a Written protest. A protest received after the time set out in the Solicitation Document will not be considered. The Vice Chancellor for Finance and Administration, or Vice President for Finance and Administration, or designee will issue a Written final agency order of the protest in a timely manner. If the protest is upheld, in whole or in part, the Institution may, in its sole discretion, either Award the Contract to the successful protestor or cancel the procurement or solicitation. Contract Award may be made prior to issuance of the final agency order if authorized by the Vice Chancellor for Finance and Administration, Vice President for Finance and Administration, or their designee.

(9) Judicial Review. Judicial review of the Institution's decision relating to a Contract Award protest will be available pursuant to the provisions of ORS 183.480 et seq.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0150

Right to Inspect Plant

The Institution may, at reasonable times, inspect the part of the plant or place of business of a Contractor or any subcontractor that is related to the performance of any prospective Contract or Awarded Contract.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0155

Negotiations

(1) The Institution may negotiate in accordance with sections (4) and (5) of this rule with the highest-ranked Bidders or Proposers after determining that all Responsible Responsive Bids or Proposals exceed the Institution's cost estimate.

(2) The Institution may also commence negotiations with Proposers in the competitive range following the:

(a) Initial determination of the competitive range based on evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the Solicitation Document. After evaluation of all Proposals in accordance with the criteria set forth in the Solicitation Document, the Institution will determine Proposers in the competitive range.

(b) The Institution may increase the number of Proposers in the competitive range if the Institution's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial competitive range are closely competitive or have a reasonable chance of being determined the best Proposer. The Institution may decrease the number of Proposers in the initial competitive range only if the excluded Proposers have no reasonable chance to be the best Proposer.

(c) The Institution will provide Written notice to all Proposers identifying Proposers in the competitive range.

(d) After determination of the competitive range, the Institution may either:

(A) Provide Written notice to all Proposers in the competitive range of its intent to Award the Contract to the highest-ranked Proposer in the competitive range; or

(B) Engage in discussions with Proposers in the competitive range and accept revised Proposals from them as set forth in section (3) of this rule and following such discussions and receipt and evaluation of revised Proposals, conduct negotiations as set forth in sections (3) and (4) of this rule with the Proposers in the competitive range.

(3) If the Institution chooses to enter into discussions with and receive best and final Proposals, the Institution will proceed as follows:

(a) The Institution will initiate oral or written discussions with all Proposers submitting Responsive Proposals or all Proposers in the competitive range regarding their Proposals with respect to the provisions of the Solicitation Document that the Institution identified in the Solicitation Document as the subject of discussions. The Institution may conduct discussions for the following purposes:

(A) Informing eligible Proposers of deficiencies in their initial Proposals;

(B) Notifying eligible Proposers of parts of their Proposals for which the Institution would like additional information; or

(C) Otherwise allowing eligible Proposers to develop revised Proposals that will allow the Institution to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Solicitation Document.

(b) The Institution may conduct discussions with each eligible Proposer necessary to fulfill the purposes of this section (3), but need not conduct the same amount of discussions with each eligible Proposer. The Institution may terminate discussions with any eligible Proposer at any time. However, the Institution will offer all eligible Proposers the same opportunity to discuss their Proposals with the Institution before the Institution notifies eligible Proposers of the date and time pursuant to section (6) that best and final Proposals will be due. At any time during the time allowed for discussions, the Institution may:

(A) Continue discussions with a particular eligible Proposer;

(B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

(C) Conclude discussions with all remaining eligible Proposers and provide notice pursuant to section (6) of this rule to the eligible Proposers requesting best and final Proposals.

(c) The Institution may adjust the evaluation of a Proposal as a result of a discussion under this section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the Solicitation Document.

(4) Negotiations.

(a) The Institution may commence serial negotiations with the highest-ranked eligible Bidder or Proposer or commence simultaneous negotiations with all eligible Bidders or Proposers.

(b) The Institution may negotiate:

(A) The statement of Work;

(B) The Contract Price as it is affected by negotiating the statement of Work; and

(C) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Solicitation Document. Accordingly, Bidders or Proposers will not submit and the Institution will not accept for negotiation, any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Solicitation Document.

(5) At any time during discussions or negotiations that the Institution conducts in accordance with this rule, the Institution may terminate discussions or negotiations with the highest-ranked Bidder or Proposer or the Bidder or Proposer with whom it is currently discussing or negotiating, if the Institution reasonably believes that:

(a) The Bidder or Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the Bidder or Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(c) If the Institution is conducting serial negotiations and the Institution terminates negotiations with a Proposer in accordance with section (3)(b)(B) of this rule, the Institution may then commence negotiations with the next highest scoring Proposer in the competitive range and contin-

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ue the process described in section (3) of this rule until the Institution has either:

(A) Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or

(B) Completed one round of discussions or negotiations with all Proposers in the competitive range, unless the Institution provided for more than one round of discussions or negotiations in the Solicitation Document.

(d) If the Institution chooses to conduct competitive negotiations, the Institution may negotiate simultaneously with competing Proposers. The Institution:

(A) Will treat all Proposers fairly and will not favor any Proposer over another;

(B) May disclose other Proposer's Proposals or the substance of negotiations with other Proposers only if the Institution notifies all of the Proposers with whom the Institution will engage in negotiations of the Institution's intent to disclose before engaging in negotiations with any Proposer.

(e) Any oral modification of a Proposal resulting from negotiations under sections (4) and (5) will be reduced to Writing by the Proposer.

(6) If best and final Proposals are required, the Institution will establish a common date and time by which Proposers must submit best and final Proposals. Best and final Proposals will be submitted only once, provided, however, the Institution may make a written determination that it is in the Institution's best interest to conduct additional discussions, negotiations, or change the Institution's requirements and require another submission of best and final Proposals. The Institution will evaluate Proposals as modified.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-061-0160

Disqualification from Consideration for Award of Contracts

(1) An Institution may disqualify an Entity from consideration for award of Institution Contracts for the reasons listed in subsection (2) of this section after providing the Entity with notice and a reasonable opportunity to be heard.

(a) All OUS Institutions may rely upon a disqualification of an Entity by another Institution. The Chancellor's Office will maintain a current roster for Entities that have been disqualified.

(b) In lieu of the disqualification process described in this rule, an Institution contracting for a Public Improvement may petition the Construction Contractors Board to disqualify an Entity from consideration for award of the Institution's Public Improvement Contracts for the reasons listed in subsection 2 of this rule.

(2) An Entity may be disqualified from consideration for Award of a Contract for any of the following reasons:

(a) A primary employee of the Entity has been convicted of a criminal offense as an incident of obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(b) A primary employee of the Entity has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects the person's responsibility for the Entity;

(c) A primary employee of the Entity has been convicted under state or federal antitrust statutes;

(d) A primary employee of the Entity has committed a violation of a contract provision that is regarded by an Institution or the Construction Contractors Board to be so serious as to justify disqualification. A violation may include, but is not limited to, a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the Entity may not be considered to be a basis for disqualification;

(e) The Entity does not carry workers' compensation or unemployment insurance as required by statute.

(3) An Institution will issue a Written decision to disqualify an Entity under this section. The decision will:

(a) State the reasons for the action taken; and

(b) Inform the disqualified Entity of the appeal rights of the Entity under ORS 279C.445 and 279C.450.

(4) A copy of the decision issued under subsection (3) of this section must be mailed or otherwise furnished immediately to the disqualified Entity.

(5) Appeal of Disqualification. An Entity who wishes to appeal disqualification will, within three (3) business days after receipt of notice of disqualification, notify the Institution in Writing that the Entity appeals the disqualification. Immediately upon receipt of the notice of appeal, the Institution will notify the Director of the Oregon Department of Administrative Services, or designee.

(6) The Oregon Department of Administrative Services will conduct the appeal in accordance with ORS 279C.450.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-062-0000

Definitions

All capitalized terms in chapter 580, division 62 have the meanings set forth in OAR 580-061-0010 unless the context requires otherwise or except as stated.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-062-0005

Procurement and Contracting Procedures

The procedures set out in OAR 580-061-0000 through 580-061-0160 will be used for the procurement of personal or professional services or goods and services.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-062-0010

Procurement Card

The Chancellor's Office may maintain procurement card services for the benefit of the Institutions. The Controller's Office of the Chancellor's Office will publish policies governing use of the procurement card.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-062-0015

Personal/Professional Services, Goods, and Services Contract Procurement Thresholds

(1) When procuring personal or professional services, goods, or services, not including Professional Consultants as defined in chapter 580, division 63, Institutions will conduct the procurement in accordance with the Direct Procurement, Informal Procurement, or Formal Procurement method, unless another method is applicable, based on the anticipated contract price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties. Multiple Contracts, purchase orders, or purchasing requisitions will not be issued separately with the intent to circumvent these rules.

(a) \$25,000 or less — Direct Procurement or other method of procurement that the Institution deems beneficial to the procurement.

(b) \$25,000.01 to \$100,000 — Informal Procurement, Formal Procurement, or other method of procurement, except the Direct Procurement method, that the Institution deems beneficial to the procurement.

(c) Greater than \$100,000 — Formal Procurement or other method of procurement, except the Direct Procurement or Informal Procurement methods, that the Institution deems beneficial to the procurement.

(2) Notwithstanding subsection (1), if the source of the funding for the procurement requires a different procurement method, the Institution will comply with the procurement method required by the funding source.

Stat. Auth.: ORS 351
Stats. Implemented:
Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-062-0020

Methods of Procurement

Institutions will use the following methods of procurement when procuring personal or professional services or goods and services.

(1) Direct Procurement. A process where the Institution negotiates directly with a single Entity to provide personal or professional services or goods and services.

(2) Informal Procurement. A Competitive Process where the Institution posts an advertisement of the opportunity on the OUS procurement website for a reasonable time necessary to obtain at least three Bids or Proposals. The Institution may also directly contact prospective Bidders or Proposers. If the notice has been posted for a reasonable time period and

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fewer than three Bids or Proposals have been submitted, the Institution may enter into a Contract with a Responsible Bidder or Proposer based on the Specifications contained in the Solicitation Document.

(3) Formal Procurement. A Competitive Process where the Institution:

(a) Creates a Solicitation Document that contains the procurement procedures and necessary Specifications.

(b) Publishes a notice of the procurement on the OUS procurement website and, if beneficial to the procurement, in a trade periodical, newspaper of general circulation, or other minority, women, and emerging small business targeted periodicals, Institution website, or other medium for advertising. The notice must specify when and where the Solicitation Document may be obtained and the Closing Date/Time. The notice must be published for a duration reasonable under the circumstances for the procurement.

(c) Conducts the procurement in accordance with chapter 580, division 61, section 0000 through 0160.

(4) Emergency Procurement. The Institution President, Chancellor, or designee may declare an Emergency when such a declaration is deemed appropriate. The reasons for the declaration will be documented and will include justifications for the procedure used to select the Entity for a Contract within the scope of the Emergency declaration. After the Institution President, Chancellor, or designee has declared an Emergency, the Institution may negotiate a Contract with any qualified Entity for services included in the scope of the Emergency. The Institution will maintain appropriate records of negotiations carried out as part of the contracting process.

(5) Retainer. Institutions may conduct a Formal Procurement to enter into Retainer Contracts with multiple Entities to provide personal or professional services or goods and services at contracted rates of compensation or based on pre-qualifications.

(6) Alternative Processes. Notwithstanding the foregoing procedures, the Institution Contract Officer may authorize alternative procurement methods that provide a Competitive Process to two or more Entities to Contract with the Institution and meet the following objectives:

(a) Responds to innovative business and market methods; or

(b) Contributes to Institution productivity improvement and process redesign; or

(c) Results in comprehensive cost-effectiveness and productivity for the Institution.

(7) Exempt. Institutions need not follow, regardless of value, a Competitive Process when seeking or acquiring or paying for the following goods and services:

(a) Educational services.

(b) Brand-name goods and services or product prequalification. Institutions may specify brand names in the procurement of goods and services if that particular product or service has attributes not found in other goods or services. In addition, when specific design or performance specifications must be met for a good or service to be purchased, an Institution may specify a list of qualified goods or services by reference to the qualified goods or services of a particular contractor or potential contractor.

(c) Advertising and media services, excluding consulting services.

(d) Price-regulated goods and services, including utilities, where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

(e) Goods or services under federal contracts. When the price of goods and services has been established by a contract with an agency of the federal government pursuant to a federal contract award, Institutions may purchase the goods and services in accordance with the federal contract. In addition, Institutions may purchase specific equipment that is only available from one source or use specific Entities that are expressly required under the terms of the contract.

(f) Copyrighted materials. Copyrighted materials covered by this exemption may include, but are not limited to, textbooks, workbooks, curriculum kits, reference materials, software, periodicals, library books, library materials, and audio, visual, and electronic media.

(g) Investment contracts and retirement plan services, excluding consulting services.

(h) Food and food-related products.

(i) Maintenance services directly from the contractor providing the goods.

(j) Used personal property.

(k) Goods purchased for resale to outside entities.

(L) Goods or services related to intercollegiate athletic programs.

(m) Cadavers or Cadaveric organs.

(n) Hotel sites for large conferences and workshops.

(o) Dues, registrations, and membership fees.

(p) Gasoline, diesel fuel, heating oil, lubricants, natural gas, electricity, and similar commodities and products and the transportation thereof.

(q) Supplies, maintenance, and services for ocean-going vessels when they are in other than home port.

(r) Repair and overhaul of goods or equipment.

(s) Goods or services purchased in foreign countries.

(t) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135, and 414.145 for purposes of source selection.

(u) Grants.

(v) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which an Institution is or may become interested.

(w) Contracts entered into, issued, or established in connection with:

(A) The incurring of debt by an Institution, including but not limited to the issuance of bonds, certificates of participation, and other debt repayment obligations, and any associated Contracts, regardless of whether the obligations that the Contracts establish are general, special, or limited;

(B) The making of program loans and similar extensions or advances of funds, aid, or assistance by an Institution to a public or private body for the purpose of carrying out, promoting, or sustaining activities or programs authorized by law; or

(C) The investment of funds by an Institution as authorized by law and other financial transactions of an Institution that by their character cannot practically be established under the Competitive Process.

(x) Contracts for employee benefit plans as authorized by law.

(y) Services provided by those in the medical community including, but not limited to, doctors, physicians, psychologists, nurses, veterinarians, and those with specific license to administer treatments for the health and well-being of people or animals.

(z) Artists, performers, photographers, graphic designers, website design, and speakers.

(aa) Sponsorship agreements for Institution events or facilities.

(8) Sole Source. A process where the Institutional President, the Chancellor or designee has made a Written determination that due to special needs or qualifications, only a Single Seller is reasonably available to provide such personal or professional services or goods or services. Sole source procurement will be avoided except when no reasonably available alternative source exists.

(a) Each Institution will provide public notice of its determination that the person or professional services or goods or services are only available from a Single Seller. Public notice may be provided on the OUS procurement website. The public notice will describe the personal or professional services or goods or services to be acquired from the Single Seller, identify the prospective Contractor, and include the date, time and place that protests are due. The Institution shall give Entities at least seven (7) Days from the date of notice publication to protest the sole source determination.

(b) An Entity may protest the Institution's determination that the person or professional services or goods or services are available from a Single Seller in accordance with OAR 580-061-0145.

(c) On an annual basis, Institution Presidents, or their designees will submit a report to the Board summarizing approved sole source procurements for the Institution for the prior fiscal year. The report will be made available for public inspection.

(9) Special Entity. Institutions may enter into Contracts without using a Competitive Process when the contracting Entity is a federal, state, or local governmental agency, or a state Qualified Rehabilitation Facility certified by the Oregon Department of Human Services or the Oregon State Procurement Office. Institutions may participate in cooperative procurements with other contracting agencies if it is determined, in Writing, that the solicitation and award process for the Contract is substantially equivalent to the respective process established in these rules.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0000

Authority

These rules establish the procedures that will be followed by the Institutions of the Oregon University System (OUS) to erect, improve, repair, maintain, equip, and furnish buildings and structures under the control of the Board.

Stat. Auth.: ORS 351.060

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

ADMINISTRATIVE RULES

580-063-0005

Authorization to Undertake Capital Construction Projects

Capital construction is defined as any construction or facility improvement that costs \$500,000 or more and is not considered maintenance or repair. Before an Institution contracts for capital construction on land owned or controlled by the Board, or prepares other than conceptual plans or preconstruction design, the Institution will obtain approval, regardless of the source of funds or method by which the project is to be financed. To obtain approval, the Institution will describe the project, the financing plan for design and construction, and the operation and maintenance cost of the proposed project.

(1) If appropriate Systemwide limitation exists for a capital construction project that totals \$500,000 or more but less than \$5 million, inclusive of all fund sources, the Chancellor or designee may approve the allocation of the existing expenditure authority to the Institution.

(2) Any capital construction project that does not meet the criteria in subsection (1) of this section shall be approved by the Board and submitted to the Legislature.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0010

Definitions

All capitalized terms in chapter 580, division 63, have the meanings set forth in OAR 580-061-0010 unless set forth below, or unless the context requires otherwise or except as stated.

(1) "Construction Related Services" means one or more related services, which includes, but is not limited to: finance, design, preconstruction, and construction services. The project delivery methods that use Construction-Related Services include: design-build, construction manager at risk, agency construction management, and performance contracting.

(2) "Professional Consultant" means architects, engineers, planners, land surveyors, appraisers, construction managers, and similar professional consultants.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0015

Procurement and Contracting Procedures

The procedures set out in OAR 580-061-0000 through 580-061-0160 will be used for the procurement of Construction-Related Services and Professional Consultants.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0020

Methods of Procurement

Institutions will use the following methods of procurement when procuring Professional Consultant services or Construction-Related Services.

(1) Direct Procurement. A process where the Institution negotiates directly with a single Entity to provide Professional Consultant services or Construction-Related Services.

(2) Informal Procurement. A competitive process where the Institution posts an advertisement of the opportunity on the OUS procurement website for a reasonable time necessary to obtain at least three Bids or Proposals. The Institution may also directly contact prospective Bidders or Proposers. If the notice has been posted for a reasonable time period and fewer than three Bids or Proposals have been submitted, the Institution may enter into a Contract with a Responsible Bidder or Proposer based on the Specifications contained in the Solicitation Document.

(3) Formal Procurement. A Competitive Process where the Institution:

(a) Creates a Solicitation Document that contains the procurement procedures and necessary Specifications.

(b) Publishes a notice of the procurement on the OUS procurement website and, if beneficial to the procurement, in a trade periodical, newspaper of general circulation, or other minority, women, and emerging small business targeted periodicals, institutional website, or other medium for advertising. The notice must specify when and where the Solicitation Document may be obtained and the Closing Date/Time. The notice must be published for a duration reasonable under the circumstances for the procurement.

(c) Conducts the procurement in accordance with Chapter 580, Division 61, section 0000 through 0160.

(4) Emergency Procurement. The Institution President, Chancellor, or designee may declare an Emergency when such a declaration is deemed appropriate. The reasons for the declaration will be documented and will include justifications for the procedure used to select the Contractor or Professional Consultant for a Contract or Public Improvement Contract within the scope of the Emergency declaration. After the Institution President, Chancellor, or designee has declared an Emergency, the Institution may negotiate a Contract or Public Improvement Contract with any qualified Entity or Professional Consultant for services included in the scope of the Emergency declaration. The Institution will maintain appropriate records of negotiations carried out as part of the contracting process.

(5) OUS Retainer Contract Program

(a) The OUS Capital Construction and Planning Office will maintain Retainer Contracts for Professional Consultants, Construction Related Services, and any other service that may from time to time benefit Institutions. The Retainer Contracts will be established in accordance with this subsection.

(A) Periodically, but no less often than every two years, the OUS Capital Construction and Planning Office will invite interested Contractors to submit business information that meets minimum qualifications as described in a Solicitation Document. Contractors that meet the minimum qualifications and have not been disbarred or disqualified by an agency of the State of Oregon as outlined in OAR 580-061-0160, may be offered a Retainer Contract to be listed on the respective retainer program to provide services in a non-exclusive and on an as-needed basis.

(B) Notice of the procurement will be published on the OUS procurement website and, if beneficial to the procurement, in a trade periodical, newspaper of general circulation, or other minority, women, and emerging small business targeted periodicals, Institution website, or other medium for advertisement.

(b) The OUS Capital Construction and Planning Office may enter into interagency agreements to permit other public agencies to utilize the services offered by Entities that have entered into Retainer Contracts if the public agency agrees to conditions, including but not limited to:

(A) Follow the procurement processes established in these rules.

(B) Use the contract templates associated with each retainer program.

(C) Any service procured will be the sole financial responsibility of the public agency.

(D) The public agency will be solely liable to resolve all disputes that may arise from breach of contract.

(E) The OUS Capital Construction, Planning, and Budget Office may impose a reasonable administrative fee on the public agency using the Retainer Contracts based on the compensation for services procured to recover administrative costs, legal review fees, and to improve or expand retainer programs.

(c) The OUS Capital Construction, Planning, and Budget Office will maintain an electronic roster of all Professional Consultants and Contractors who have entered into Retainer Contracts. Institutions that utilize retainer programs will follow the procedures established in these rules and will only execute contracts from templates that have been approved for each respective retainer program.

(6) Sole Source. A process where the Institution President, the Chancellor or designee has made a Written determination that due to special needs or qualifications, only a Single Seller is reasonably available to provide such Construction Related Services. Sole source procurement will be avoided except when no reasonably available alternative source exists.

(a) Authority. Institutions may authorize sole source procurements up to \$1,000,000 cumulative for all Institution projects throughout a fiscal year. The Chancellor or designee may authorize sole source procurements up to \$5,000,000 cumulative for each Institution's projects throughout a fiscal year. The Board will approve all other sole source procurements.

(b) Each Institution will provide public notice of its determination that the Construction Related Services are only available from a Single Seller. Public notice may be provided on the OUS procurement website. The public notice will describe the Construction Related Services to be acquired from the Single Seller, identify the prospective Contractor, and include the date, time and place that protests are due. The Institution shall give Entities at least seven (7) Days from the date of notice publication to protest the sole source determination.

(c) On an annual basis, Institution Presidents, or their designees will submit a report to the Board summarizing approved sole source procurements for the Institution for the prior fiscal year. The report will be made available for public inspection.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

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580-063-0025

Contracts for Professional Consultants

Institutions will use one of the following two procedures when contracting for Professional Consultant services:

(1) OUS Capital Construction Retainer Program for Professional Consultants.

(a) For Professional Consultant service contracts where the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties is \$100,000 or less, the Institution may select a Professional Consultant that has entered into a Retainer Contract.

(b) For Professional Consultant service contracts where the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties is \$100,000.01 to \$250,000, the Institution must select at least three Professional Consultants who have entered into Retainer Contracts to provide proposals for the service. Selection of a Professional Consultant from submitted proposals will be based on the criteria set forth in the Solicitation Document.

(c) For Professional Consultant service contracts where the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties is \$250,000.01 to \$1,000,000, the Institution will post an advertisement of the opportunity on the OUS procurement website. All eligible Professional Consultants that have entered into Retainer Contracts will have an opportunity to submit a proposal in response to the opportunity. Selection of a Professional Consultant from submitted proposals will be based on the criteria set forth in the Solicitation Document.

(2) Standard Procurement. When procuring Professional Consultant services, Institutions will conduct the procurement in accordance with the Direct Procurement, Informal Procurement, or Formal Procurement method, unless another method is applicable, based on the anticipated Contract Price, including consultant fees, reimbursable expenses, and all amendments contemplated by the parties. Multiple Contracts, purchase orders, or purchasing requisitions will not be issued separately with the intent to circumvent these rules.

(a) \$25,000 or less — Direct Procurement or other method of procurement that the Institution deems beneficial to the procurement.

(b) \$25,000.01 to \$100,000 — Informal Procurement, Formal Procurement, or other method of procurement, except the Direct Procurement method, that the Institution deems beneficial to the procurement.

(c) Greater than \$100,000 — Formal Procurement or other method of procurement, except the Direct Procurement or Informal Procurement methods, that the Institution deems beneficial to the procurement.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0030

Contracts for Construction Services

Institutions will use one of the following policies and procedures when procuring Construction-Related Services for a Contract or Public Improvement Contract:

(1) OUS Capital Construction Retainer Program for Construction Related Services.

(a) For Construction-Related Services Contracts or Public Improvement Contracts where the anticipated Contract Price, including reimbursable expenses and all Change Orders contemplated by the parties is \$50,000 or less, the Institution may select a Contractor that has entered into a Retainer Contract.

(b) For Construction-Related Services Contracts or Public Improvement Contracts where the anticipated Contract Price, including reimbursable expenses and all Change Orders contemplated by the parties is \$50,000.01 to \$500,000, the Institution must select at least three Contractors that have entered into Retainer Contracts to provide Bids or Proposals for the service. Selection of a Contractor from submitted Bids or Proposals will be based on the criteria set forth in the opportunity.

(c) For Construction-Related Services Contracts or Public Improvement Contracts where the anticipated Contract Price, including reimbursable expenses and all Change Orders contemplated by the parties is \$500,000.01 to \$1,000,000, the Institution will post an advertisement of the opportunity on the OUS procurement website. All eligible Contractors that have entered into Retainer Contracts will have an opportunity to submit a Bid or Proposal in response to the opportunity. Selection of a Contractor from submitted Bids or Proposals will be based on the criteria set forth in the opportunity.

(2) Standard Procurement. When procuring Construction Related Services, Institutions will conduct the procurement in accordance with the Direct Procurement, Informal Procurement, or Formal Procurement method, unless another method is applicable, based on the anticipated Contract Price, including reimbursable expenses and all Change Orders contemplated by the parties. Multiple Contracts, purchase orders, or purchasing requisitions will not be issued separately with the intent to circumvent these rules.

(a) \$25,000 or less — Direct Procurement or other method of procurement that the Institution deems beneficial to the procurement.

(b) \$25,000.01 to \$100,000 — Informal Procurement, Formal Procurement, or other method of procurement, except the Direct Procurement method, that the Institution deems beneficial to the procurement.

(c) Greater than \$100,000 — Formal Procurement or other method of procurement, except the Direct Procurement or Informal Procurement methods, that the Institution deems beneficial to the procurement.

(3) In accordance with ORS 279C.800 et seq, projects having a total Contract Price of \$50,000 or more, or on a project where the combined Contract Price of all contracts awarded on the project is more than \$50,000, will be subject to the Bureau of Labor and Industries Prevailing Wage Laws. Projects may not be divided into more than one Contract to avoid the application of this subsection. Projects funded in part or wholly by federal funds will comply with the higher of the state or federal prevailing rate of wage.

(4) No Contract will be awarded to any construction firm that is not licensed to do business in the State of Oregon, registered or licensed by the appropriate state licensing boards, or listed as ineligible to enter into Contracts or Public Improvement Contracts by the Bureau of Labor and Industries.

(5) Contractors will post and maintain performance and payment bonds as required in the Solicitation Document. For Public Improvement Contracts with a total Contract Price in excess of \$100,000, one hundred percent performance and payment bonds will be required.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0035

Oregon's Percent for Art

The "Percent for Art" legislation governed by ORS 276.073 through 276.090, guides the acquisition of Oregon's state art collection. For acquisition of art work in applicable state buildings, this program sets aside no less than 1 percent of the construction funds of buildings with a construction budget of \$100,000 or more. The Institution will be responsible to ensure compliance with the "Percent for Art" for applicable projects.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0040

Design Standards

All major facility projects will be planned, designed, constructed, and renovated to meet high performance building standards for energy efficiency and environmental sustainability as defined by the Department of Energy and the State of Oregon.

(1) State Energy Efficiency Design is the policy of the State of Oregon that facilities to be constructed or purchased by authorized state agencies be designed, constructed, renovated, and operated so as to minimize the use of nonrenewable energy resources and to serve as models of energy efficiency per ORS 276.900 through 276.915.

(2) Green building design and construction is an integral part of OUS Capital Construction. Institution projects should consider design standards that incorporate the 'Leadership in Energy & Environmental Design' (LEED) Silver standards, which promote buildings that significantly reduce or eliminate the negative impact of buildings on the environment and occupants.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

580-063-0045

Retainage Processing Charges

(1) The Institution may require a retainage for Construction Related Services under \$1,000,000. For Construction Related Services over \$1,000,000, the Institution will withhold a retainage.

(2) An Institution will not retain an amount in excess of five percent (5%) of the Contract Price for Work completed. If the Contractor has per-

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formed at least fifty percent (50%) of the Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's written approval, the Institution may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Institution will respond in Writing to all such applications within a reasonable time. When the Work is ninety-seven and a half percent (97.5%) completed, the Institution may, at its discretion and without application by the Contractor, reduce the retained amount to one hundred percent (100%) of the value of the remaining unperformed Work. An Institution may at any time reinstate retainage. Retainage will be included in the final payment of the Contract Price.

(3) For Construction Related Services over \$1,000,000 the Contractor may request that the retainage be deposited in an interest-bearing account at a financial institution. Title to such funds will remain with the Board until the Work is complete and accepted by the Institution. Interest on deposited retainage accrues to the benefit of the Contractor and will remain in the retainage account until the Work is accepted. The Institution may deduct fees necessary to open and maintain an interest-bearing account.

(4) Alternatives to cash retainage. In lieu of cash retainage to be held by the Institution or financial institution, the Contractor may substitute one of the following:

(a) Deposit of securities:

(A) The Contractor may deposit bonds or securities with the Institution or in any bank or trust company to be held for the benefit of the Institution. In such event, the Institution will reduce the retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds and securities deposited or acquired in lieu of retainage will be of a character approved by the Controller's Office, including but not limited to:

- (i) Bills, certificates, notes, or bonds of the United States.
- (ii) Other obligations of the United States or its agencies.
- (iii) Obligations of any corporation wholly owned by the federal government.

(iv) Indebtedness of the Federal National Mortgage Association.

(C) Upon the Institution's determination that all requirements for the protection of the Institution's interests have been fulfilled, it will release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond. An Institution, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Institution in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond will accept surety bonds from its sub-contractors and suppliers in lieu of retainage. In such cases, retainage will be reduced by an amount equal to the value of the bond and the excess will be reimbursed to the Contractor.

(5) An Institution will recover from the Contractor all costs incurred in the proper handling of cash retainage and securities, by reduction of the final Contract payment.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: OSSHE 5-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

Oregon University System, Eastern Oregon University Chapter 579

Rule Caption: Amend Special Student and Course Fees.

Adm. Order No.: EOU 1-2008

Filed with Sec. of State: 3-14-2008

Certified to be Effective: 3-14-08

Notice Publication Date: 2-1-2008

Rules Amended: 579-020-0006

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

Rules Coordinator: Lara Moore—(541) 962-3368

579-020-0006

Special Student Fees

Eastern Oregon University intends to adopt by reference Special Student Fees for the 2007-08 school year.

[ED NOTE: Fee list referenced is available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: EOSC 3, f. & ef. 6-23-76; EOSC 8, f. & ef. 6-16-77; EOSC 6-1978, f. & ef. 10-2-78; EOSC 1-1979, f. & ef. 6-27-79; EOSC 1-1981, f. & ef. 1-12-81; EOSC 3-1981, f. & ef. 7-1-81; EOSC 2-1983, f. & ef. 12-16-83; EOSC 2-1984, f. & ef. 10-25-84; EOSC 1-1986, f. & ef. 2-13-86; EOSC 2-1988, f. & cert. ef. 10-28-88; EOSC 2-1989, f. & cert. ef. 7-31-89;

EOSC 2-1990, f. & cert. ef. 10-9-90; EOSC 3-1991, f. & cert. ef. 9-20-91; EOSC 5-1990, f. & cert. ef. 12-20-91 (and corrected 1-2-92); EOSC 1-1992, f. & cert. ef. 5-13-92; EOSC 2-1992, f. & cert. ef. 8-24-92; EOSC 4-1993, f. & cert. ef. 8-2-93; EOSC 4-1994, f. & cert. ef. 7-25-94; EOSC 1-1996, f. & cert. ef. 8-15-96; EOU 1-2001, f. & cert. ef. 9-28-01; EOU 1-2003, f. & cert. ef. 7-31-03; EOU 1-2005, f. & cert. ef. 5-16-05; EOU 1-2006, f. & cert. ef. 4-14-06; EOU 1-2007, f. & cert. ef. 5-14-07; EOU 4-2007(Temp), f. & cert. ef. 8-15-07 thru 1-15-08; Administrative Correction 1-24-08; EOU 1-2008, f. & cert. ef. 3-14-08

Rule Caption: Amend fee classification, usage priorities and rental rates at Eastern Oregon University.

Adm. Order No.: EOU 2-2008

Filed with Sec. of State: 3-14-2008

Certified to be Effective: 3-14-08

Notice Publication Date: 2-1-2008

Rules Amended: 579-030-0005, 579-030-0010, 579-030-0015, 579-030-0020

Subject: The proposed amendments to Division 30 more accurately reflect the current fee classification and usage priorities for facilities rented at Eastern Oregon University. The amendments also reflect a needed rent increase in the Eocene Court Apartments to offset increases in utilities and maintenance costs.

Rules Coordinator: Lara Moore—(541) 962-3368

579-030-0005

Special Rental Rates for Rental Properties at Eastern Oregon State College

Address — Rental Rate:

(1) 1201 C — \$400;

(2) Damage deposit on this residence, payable in advance, is equal to one month's rent. This sum to be applied on the last month of occupancy and/or for any damage incurred during the life of this lease.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: EOSC 4, f. 7-29-76, ef. 9-1-76; EOSC 5-1978, f. & ef. 10-2-78; EOSC 11-1979, f. & ef. 10-12-79; EOSC 4-1981, f. & ef. 10-2-81; EOSC 3-1984, f. & ef. 10-25-84; EOSC 3-1995, f. & cert. ef. 2-16-95; EOU 2-2008, f. & cert. ef. 3-14-08

579-030-0010

Special Rental Rates for EOCENE Courts at Eastern Oregon State College

(1) Effective May 1, 2008 monthly rent.

(2) Family Housing two bedroom units: \$325, includes water, sewer and garbage service. \$30.00 application deposit required.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: EOSC 9, f. & ef. 8-15-77; EOSC 3-1978, f. & ef. 6-29-78; EOSC 6-1979, f. & ef. 6-27-79; EOSC 4-1991, f. & cert. ef. 9-20-91; EOU 2-2008, f. & cert. ef. 3-14-08

579-030-0015

Rates for Use of Campus Facilities by Off-Campus Organizations

(1) Eastern Oregon University reserves the right to negotiate any fees at any time.

(2) Groups or individuals may be assessed charges, at actual cost, for special setups, take-downs, custodial, security, damages, or special services.

(3) In addition to section (2) of this rule, fees are required for certified technicians/student technicians.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: EOSC 2-1981, f. & ef. 1-12-81; EOSC 1-1983, f. & ef. 2-4-83; EOSC 1-1991, f. & cert. ef. 2-12-91; EOSC 6-1991, f. & cert. ef. 12-20-91; EOU 2-2008, f. & cert. ef. 3-14-08

579-030-0020

Fee Classification and Usage Priorities

The following classifications have been developed for the assessment of base rental fees for campus facilities. Each request for use of campus facilities will be classified by the Events Scheduling to determine the appropriate base rental charges. A current classification/rental fee schedule is available from the office of Events Scheduling. Priority for use of campus facilities is given also according to the classifications that follow:

(1) Class 1 — Eastern Oregon University Sponsored Activities:

(a) Instructional activities;

(b) Co- and extra-curricular activities and programs sponsored by EOU recognized departments, offices and organizations;

(c) University sponsored events, meetings and conferences where faculty, staff, or administration are involved and it is deemed that the University has a special or compelling interest to host the event and it is within the mission of the University.

(d) University recognized student-organization sponsored activities;

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(e) Meetings sponsored by Schools or departments that are within the mission of the University and/or directly benefit the University.

(2) Class II — Fee waiver approved by special application or negotiated rate by contract.

(3) Class III — Other Educational Institutions/government, civic and public agencies:

- (a) State agencies.
- (b) Federal agencies
- (c) Non OUS colleges and universities.
- (d) City/County government agencies.
- (e) Public School District activities.
- (f) Other public agencies.

(4) Class IV — Non-Profit Organizations:

(a) Non-profit chartered youth groups, i.e., Boy Scouts; Girl Scouts; Camp Fire Girls, etc.

(b) Agencies/organizations serving youth recreation groups (i.e., Babe Ruth and American Legion baseball, swim club, etc.)

(c) Foundations and Boards of non-profit groups.

(d) Local charter civic organizations, (i.e., Kiwanis, Lions, Opiomisit, Soroptimist, AAUW, etc.)

(e) Community organization meetings of a civic/service nature, (i.e., United Way, food banks, humane society, Shelter from the Storm, Eagle Cap Support Team, etc.)

(5) Class V — Non-University, private or commercial entities, organizations, and individuals:

- (a) Private, commercial or industrial interests.
- (b) Religious organizations and activities;
- (c) Political parties or organizations;
- (d) Private individuals, unions, or groups.

(6) Effective September 1, 1992, those school libraries who wish to continue participation in the courier service currently being funded completely by the Eastern Oregon University Library will be assessed a \$10 monthly charge, payable annually (\$90) at the beginning of each school year (i.e., September 1). This fee will be charged to each drop site, regardless of whether it be an individual school, more than one school utilizing one drop site, or an entire school district utilizing one drop site. Regional (eastern Oregon) school libraries who wish to continue participation in the state-wide courier service currently being funded completely by the Eastern Oregon University Library will be assessed a \$10 monthly charge, payable annually (\$90) at the beginning of each school year (i.e., September 1). This fee will be charged to each drop site, regardless of whether it be an individual school, more than one school utilizing one drop site, or an entire school district utilizing one drop site.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: EOCS 6-1991, f. & cert. ef. 12-20-91; EOCS 3-1992, f. & cert. ef. 8-24-92; EOCS 6-1995, f. & cert. ef. 4-17-95; EOU 2-2008, f. & cert. ef. 3-14-08

Oregon University System, Oregon State University Chapter 576

Rule Caption: Competitive Procedures for the Purchasing, Procurement, and Contracting of Goods and Services (OSU).

Adm. Order No.: OSU 1-2008(Temp)

Filed with Sec. of State: 2-19-2008

Certified to be Effective: 2-19-08 thru 8-16-08

Notice Publication Date:

Rules Suspended: 576-008-0200, 576-008-0205, 576-008-0210, 576-008-0215, 576-008-0220, 576-008-0223, 576-008-0225, 576-008-0228, 576-008-0230, 576-008-0235, 576-008-0240, 576-008-0245, 576-008-0255, 576-008-0260, 576-008-0275, 576-008-0277, 576-008-0280, 576-008-0282, 576-008-0285, 576-008-0287, 576-008-0290, 576-008-0292, 576-008-0295

Subject: The Oregon university System has adopted new temporary rules for procurement, contracting, purchase and sale of real property (Division 60, 61, 62, and 63). Under these new rules, individual institutions no longer have the authority to adopt their own rules pertaining to these topics. These rules will be suspended until they are repealed upon permanent adoption of the new OUS rules.

Rules Coordinator: Marcia Stuart—(541) 346-5749

576-008-0200

Purpose

The purpose of the rules outlined in Oregon Administrative Rules chapter 576, division 008, sections 0200 through 0295, is to:

(1) Establish competitive procedures that are flexible enough to allow the University to purchase and contract in a way that most suits its institutional organization;

(2) Reduce prior approvals and ensure accountability through auditing;

(3) Generate and retain only necessary documentation;

(4) Develop procedures that will allow the University to use the most appropriate procurement methods and encourage innovation;

(5) Allow the University to work cooperatively with other OSSHE Institutions and other governmental units; and

(6) Allow the University to do business more easily with local and regional vendors.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0205

Code of Ethics

(1) The following Code of Ethics, adopted by the State Board of Higher Education in OAR 580-040-0205, shall apply to University employees who perform contracting and purchasing.

(a) Give first consideration to the objectives and policies of OSSHE and the institution;

(b) Strive to obtain the maximum value for expenditures;

(c) Grant all competitive suppliers equal consideration insofar as state or federal statutes and institutional policies permit;

(d) Conduct business with potential and current suppliers in an atmosphere of good faith, devoid of intentional misrepresentation;

(e) Demand honesty in sales representation whether offered through the medium of an oral or written statement, an advertisement, or a sample of the product;

(f) Encourage all segments of society to participate by demonstrating support for emerging small, disadvantaged, and minority-owned and women-owned businesses, and Qualified Rehabilitation Facilities;

(g) Consistent with the provisions of ORS 244, decline personal gifts or gratuities from any current or potential supplier of goods or services to OSSHE or its institutions;

(h) Refrain from knowingly engaging in any outside matters of financial interest incompatible with the impartial, objective, and effective performance of duties. Activities that may create a conflict of interest must be addressed in accordance with the procedures outlined in OSSHE's Internal Management Directives;

(i) Receive written consent of originator of proprietary ideas and designs before using them for competitive purchasing purposes;

(j) Foster fair, ethical, and legal trade practices.

(2) The Code is for use only by OSSHE and its institutions and creates no enforceable obligations for contractors, proposers, bidders, or other parties doing business with OSSHE nor may it be used by contractors, proposers, bidders, or other parties doing business with OSSHE who are challenging actions taken by OSSHE, its institutions, officers, employees, or agents. The code is not subject to amendment, unless amended by OSSHE.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0210

Delegation of Authority

The following delegations have been adopted by the in OAR 580-040-0210, shall apply to University procedures.

(1) Institutions of OSSHE may follow the procedures in OAR 580-040-0223 to 580-040-0295 or may develop and promulgate their own procedures by Administrative Rule for purchasing and contracting provided that such procedures ensure competitive practices. Procedures developed by the campuses must be approved by the OSSHE Vice Chancellor for Finance and Administration prior to adoption.

(2) Notwithstanding section (1) of this rule, institutions shall be subject to:

(a) OAR 580-040-0223;

(b) OAR 580-040-0228;

(c) OAR 580-040-0290;

(d) OAR 580-040-0292; and

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(e) OAR 580-040-0295.

(3) For those institutions following OAR 580-040-0223 to 580-040-0295, the Oregon State Board of Higher Education delegates authority to each OSSHE president to develop guidelines and oversee practices regarding the purchasing and procurement of, and contracting for, goods and services at each respective campus consistent with these rules.

(4) OAR 580-040-0223 to 580-040-0295 provide procedures to be used for purchasing and contracting except for:

(a) Contracts covered under the following Oregon Administrative Rules:

(A) OAR 580-040-0100 — Screening and Selection for Personal Services Contracts; or

(B) OAR 580-050-0032 to 580-050-0042 — Facilities contracting; or

(b) Where an OSSHE institution has adopted its own rules, consistent with OAR 580-040-0223 to 580-040-0295, to cover purchasing and contracting.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0215

Definitions

The following definitions shall apply to all Oregon Administrative Rules contained in this division unless the context requires otherwise:

(1) “Bid”: A competitive offer, which is binding on the bidder, in which price, delivery (or project completion), and conformance with specifications and the requirements of the Invitation to Bid or other competitive bidding method will be the predominant award criteria.

(2) “Bidder”: A person or entity offering to supply goods or services to OSSHE or any of its institutions in response to an Invitation to Bid or other competitive bidding method.

(3) “Buying Cooperative (Co-Op)”: A group of entities or organizations which have bid or negotiated for the best price available on various commodities and services based on the size of their combined purchasing power.

(4) “Closing”: The date and time announced in the solicitation (e.g., Invitation to Bid or Request for Proposals) as the deadline for submitting bids or proposals.

(5) “Competitive Process”: The process of procuring goods and services by fair and open competition, under varying market conditions, with the intent of minimizing opportunities for favoritism and assuring that contracts are awarded equitably and economically using various factors in determining such equity and economy.

(6) “Competitive Quotes”: The solicitation of offers from competing bidders. The solicitation may be accomplished by advertisement and/or by OSSHE or any of its institutions initiating a request to vendors to make an offer. The solicitation and the offer may be in writing or oral.

(7) “Contract”: The written agreement, including OSSHE’s or any of its institution’s solicitation document and the accepted portions of a bid or proposal, between OSSHE or any of its institutions and the contractor describing the work to be done and the obligations of the parties. Depending upon the goods and services being procured, OSSHE or any of its institutions may use “contract” as meaning a purchase order, price agreement, or other contract document in addition to OSSHE’s or any of its institution’s solicitation document and the accepted portions of a bid or proposal.

(8) “Contract Price”: The total of the awarded bid or proposal amount, including any approved alternates, and any fully executed change orders or amendments.

(9) “Contractor”: The individual, firm, corporation, or entity awarded the contract to furnish OSSHE or any of its institutions the goods, services, or work procured through a competitive process.

(10) “Days”: Calendar days, including weekdays, weekends, and holidays, unless otherwise specified.

(11) “Disadvantaged Business Enterprise (DBE)”: As defined in OAR 125-030-0000.

(12) “Electronic Data Interchange (EDI)”: The movement of electronic information from computer to computer. The electronic transfer of standard business transaction information between organizations in a structured application.

(13) “Emergency”: Not reasonably foreseeable circumstances that create a substantial risk of loss, damage, interruption of services, or threat to the public health or safety that requires prompt execution of a contract to remedy the condition.

(14) “Emerging Small Business (ESB)”: The meaning given in ORS 200.005(3) and (4).

(15) “Facsimile”: Electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a document (e.g., facsimile bid), the term refers to a document (in the example given, a bid) that has been transmitted to and received by OSSHE or any of its institutions via facsimile.

(16) “Invitation to Bid”: The solicitation of competitive, written, signed, and sealed bids in which specification, price, and delivery (or project completion) are the predominant award criteria.

(17) “Minority Business Enterprise (MBE)”: The meaning given in OAR 125-030-0000.

(18) “Opening”: The date, time, and place announced in a solicitation for the public opening of written, sealed bids or proposals.

(19) “Oregon Administrative Rule (OAR)”: Agency rules adopted under the Oregon Administrative Procedures Act.

(20) “Oregon Revised Statutes (ORS)”: Statutes of the State of Oregon.

(21) “OSSHE”: Oregon State System of Higher Education.

(22) “Pilot Program”: A initial trial period of a short-term, fixed-length during which the University will evaluate the effectiveness and applicability of a good, service, or program.

(23) “Price Agreement”: A non-exclusive agreement in which the contractor agrees to provide specific items or services to OSSHE or an institution at a set price during a specified period of time.

(24) “Proposal”: A competitive offer, binding on the proposer and submitted in response to a Request for Proposals, where proposal evaluation and contract award are based on criteria such as proposer qualifications and experience, product features and characteristics, service quality and efficiency, and conformance with the specifications and requirements of the solicitation. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award.

(25) “Proposer”: A person or entity who submits a proposal in response to a Request for Proposals.

(26) “Qualified Rehabilitation Facility (QRF)”: A nonprofit organization that trains and puts Oregonians with disabilities to work. QRFs are registered and reviewed on a regular basis by various state and federal agencies. The Oregon Department of Administrative Services (ODAS) certified every QRF in Oregon. See ORS 279.835 to 279.855 and OAR 125-030-0015.

(27) “Qualified Vendor Listing”: A list of vendors identified from a Request for Qualifications or Request for Information who are able to provide specific goods or services. Vendors on the list are not, however, under contract to provide those goods or services.

(28) “Request for Information (RFI)”: A written document soliciting information regarding products or services that OSSHE or an institution is interested in procuring. An RFI should describe the purpose of the procurement and the method to be used in evaluating the responses received.

(29) “Request for Proposal (RFP)”: The solicitation of written, competitive proposals or offers, to be used as a basis for making an acquisition, or entering into a contract when specification and price will not necessarily be the predominant award criteria.

(30) “Request for Qualifications (RFQ)”: A written document soliciting information regarding the qualifications of providers of services OSSHE or an institution is interested in procuring. An RFQ should describe the services that are needed and the method to be used in evaluating the responses received.

(31) “Requirements Contract”: An agreement in which a single contractor agrees to supply all of OSSHE’s or any of its institution’s requirements for specific goods, equipment, or services that arise during a specified time period.

(32) “Responsible Bidder or Proposer”: Has the meaning given in OAR 576-008-0275.

(33) “Responsive Bid or Proposal”: Has the meaning given in OAR 576-008-0277.

(34) “Retainer Agreement”: An agreement by which, pursuant to a formal Request for Proposals or bid process, multiple contractors are authorized to provide specific supplies or equipment to or perform specific services for OSSHE or its institutions in response to requests for price quotations.

(35) “Single Seller/Sole Source”: The only vendor of a particular product or service reasonably available. If OSSHE or one of its institutions chooses to procure a particular product or service that is only available from one vendor, documentation must be maintained to support the determination that the product or service is available only from that one seller.

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(36) "Unit Administrator": Department head, division head, director, vice president, provost, dean, manager, or vice provost authorized to determine and assign duties to University employees.

(37) "Solicitation Document": An Invitation to Bid or Request for Proposals, which includes all documents, whether attached or incorporated by reference, utilized for soliciting bids or proposals.

(38) "Used Personal Property": Property or equipment used by a previous owner or user for a period of time and recognized in the relevant trade or industry as "used" at the time of University purchase. It generally does not include property or equipment if the University was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(39) "Women Business Enterprise (WBE)": The meaning given in OAR 125-030-0000.

(40) "Work": The furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire contract and the timely carrying out and completion of all duties and obligations imposed by a contract.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0220

Designation of Purchasing Agents and Contract Officers

(1) The unit administrator shall designate staff authorized to enter into purchasing agreements for the University. Such authorized personnel, referred to as purchasing agents, shall be the only individuals who may procure supplies, equipment, or non-personal/professional services, and are authorized to enter into purchase orders and related purchasing documents. The unit administrator and the Business Services Office shall maintain a list, either by name or by title, of those designated, along with a description of the types and amounts of procurement they are authorized to enter into. The unit administrator shall inform the Business Services Office either by name or by title, those no longer authorized to be purchasing agents or of any changes in the types and amounts of procurements they are authorized to enter into.

(2) The Vice President for Finance and Administration shall designate staff authorized to enter into formal agreements or contracts. Such authorized personnel, shall be referred to as contracting officers or their designees. The Vice President for Finance and Administration shall keep a list, by name, of those designated, and the types and amounts of agreements and contracts they are authorized to enter into.

(3) Purchasing and contracting agreements entered into by the individuals not designated as authorized personnel shall be void. Purchasing agents only have authority as addressed in section (1) of this rule, unless they have been specifically authorized as a contracting officer or the authorized designee of a contracting officer, and then only for the specific types and amounts listed. All formal agreements and contracts must be reviewed and signed, prior to commencement of the formal contract or agreement, only by an authorized contracting officer, or their authorized designee.

(4) Authorized personnel as set forth in (1) and (2) shall be responsible for ensuring that the proper procedures, as detailed in OAR 576-008-0223 to 576-008-0295, are followed for all institutional procurements. The University may take appropriate action in response to expenditures or actions authorized contrary to OAR 576-008-0223 to 576-008-0295. Such actions include, but are not limited to, providing educational guidance, imposing disciplinary measures, and/or holding individuals personally liable for such expenditures.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0223

Applicable Model Public Contract Rules

The following provisions of the Attorney General's Model Public Contract Rules shall be applicable to the bidding, awarding, and administration of all University public contracts:

(1) OAR 137-030-0010(5) — Compliance and exceptions to terms and conditions of solicitation documents;

(2) OAR 137-030-0012 — Bids or Proposals Are Offers;

(3) OAR 137-030-0030(2) and (3) — Identification and Receipt of bids or proposals;

(4) OAR 137-030-0050 — Request for Change or Protest of Solicitation Specifications or contract Provisions;

(5) OAR 137-030-0055 — Addenda to Solicitation Documents;

(6) OAR 137-030-0060 — Pre-Opening Modification or Withdrawal of Bids or Proposals;

(7) OAR 137-030-0065 — Receipt, Opening, and Recording of Bids and Proposals;

(8) OAR 137-030-0070 — Late Bids and Proposals, Late Withdrawals, and Late Modifications;

(9) OAR 137-030-0075 — Mistakes in Bids or Proposals;

(10) OAR 137-030-0080 — Time for Acceptance;

(11) OAR 137-030-0085 — Extension of Time for Acceptance of Bid or Proposal;

(12) OAR 137-030-0102 — Rejection of all Bids or Proposals;

(13) OAR 137-030-0104 — Protest of Contractor Selection, Contract Award;

(14) OAR 137-030-0115(1) — Cancellation of invitations to bid or requests for proposals in the public interest;

(15) OAR 137-030-0120 — Disposition of Bids or Proposals if Solicitation Canceled;

(16) OAR 137-030-0130 — Foreign Contractor; and

(17) OAR 137-030-0150 — Right to Inspect Plant.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0225

Processes for Procurement of Goods and Services

(1) The University has established several basic processes for the procurement of goods and services:

(a) Formal;

(b) Informal;

(c) Direct Negotiation;

(d) Emergency;

(e) Single Seller/Sole Source;

(f) Intergovernmental;

(g) Co-ops;

(h) Procurement Cards;

(i) Price Agreements;

(j) Retainer Agreements;

(k) Requirements Contracts;

(l) Qualified Vendor Listings; and/or

(m) Alternative formal.

(2) The University and its departments will seek the best value to the extent that it is cost effective to do so. The determination of a procurement's cost may include: delivery, warranty, installation, training, maintenance, the quality of the product as it relates to life cycle of the product, etc.

(3) For each of the processes used in the procurement of goods and services, authorized personnel shall retain documentation, either hard copy or electronic, supporting the process and the actions taken to fulfill the guidelines of that process consistent with the requirements of OAR 576-008-0295. Such documentation shall be subject to audit.

(4) The formal procurement process shall be used, unless other exemptions apply, for all purchases of supplies, equipment, and services where the estimated cost exceeds \$50,000. If exceptions do not apply and a department seeks release from the formal competitive procurement process, they must obtain written or electronic approval from the University Purchasing Department.

(a) Multiple contracts, purchase orders, or purchasing requisitions shall not be issued separately with the intent to circumvent the formal purchasing process;

(b) The formal process may be accomplished in either of two ways the institution selects:

(A) Invitation to Bid — The formal bid process will require that the invitation to bid be advertised in a manner that is likely to reach bidders. The advertisements shall include information regarding the goods or services to be purchased and the time schedule for the receipt of such goods or services. The contract under this process shall be awarded to the lowest responsive and responsible bidder who meets the specifications of the contract.

(B) Request for Proposal (RFP) — The formal Request for Proposal process shall follow the same guidelines as the formal bid process except that the specifications and price will not necessarily be the predominant award criteria. Award criteria shall be detailed in the Request for Proposal.

(5) The informal procurement process may be used for all purchases of supplies, equipment, and services where the estimated cost does not exceed \$50,000, or where the University Purchasing Department has

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approved release from the formal procurement process, upon its finding that using such will not interfere with competition among perspective contractors, reduce the quality of services, or increase costs.

(a) All purchases of supplies, equipment, and services where the estimated cost exceeds \$5,000 but does not exceed \$50,000 may be accomplished through the solicitation of competitive quotes from at least three vendors. Solicitation may be accomplished by advertisement and/or by the University or any of its departments initiating a request to three or more representative vendors to make an offer. Written, oral, or electronic quotes may be solicited;

(b) When procuring goods or services through the solicitation process, information regarding vendors contacted, basis for selection, prices of various vendors, and other information pertinent to the solicitation must be clearly documented. If three vendors are not reasonably available, the justification for soliciting fewer vendors shall be documented.

(6) All purchases of supplies, equipment, and services where the estimated cost does not exceed \$5,000 may be accomplished through direct negotiation or competitive solicitation process, striving to obtain the maximum value for expenditures. Exception: Procurements being made from grant or contract funds which specify a lower threshold for competitive procurements.

(7) When procuring supplies, equipment, and services through an emergency process, the designation of such emergency may only be authorized by the University President or Vice President for Finance and Administration. The procurement process to be used will be at the discretion of authorized personnel, but must be documented. Such documentation must justify the use of such emergency process.

(8) When purchasing supplies, equipment, and services from a single seller/sole source, the University and its departments are not required to follow competitive procedures. The University and its departments shall, at the time of initial procurement, specify their intent, if any, to procure future upgrades or other compatible items through that vendor. Institutions shall document findings to support the determination that the product is available from only one seller.

(9) Regardless of dollar value, the University and its departments may contract with, and purchase goods and services from or through, other inter-governmental agencies: State of Oregon agencies, local government units, federal government units, or any other governmental entity without the use of competitive procedures. However, contracts with other states and foreign governments must be approved by the Oregon Attorney General's office.

(10) Procurement cards, or other methods of direct purchasing, may be used for any purchase where the estimated cost does not exceed \$5,000 and where such a purchase is not prohibited, i.e., alcohol and travel in certain circumstances.

(11) Following appropriate competitive procedures, the University Purchasing Department may enter into price agreements on behalf of the University departments with vendors to provide specific items at a set price during a specified period of time. Such price agreements should allow for non-exclusive use of the price agreement by other OSSHE and governmental agencies. The Purchasing Department may also purchase, and/or authorize the University departments to purchase, using State of Oregon or other governmental unit price agreements which are available for use by other governmental agencies. Authorized purchases from these price agreements may be made without the use of competitive procedures, regardless of dollar amount.

(12) The University Purchasing Department may enter into price agreements with vendors through direct negotiation after taking into account, at a minimum, the need for the particular good or service, the qualifications and reputation of the vendors, price structure, ability and willingness to respond to requests from one or more colleges and universities, location, and such other factors as authorized personnel deem appropriate.

(a) Authorized personnel shall maintain appropriate records of the process used to place the price agreement, including justification of price when a direct negotiation process is used.

(b) Direct negotiation price agreements may be entered into to:

(A) Respond to innovative business and market methods; or

(B) Contribute to University productivity improvement and process redesign; or

(C) Result in comprehensive cost effectiveness and productivity for the University; and

(D) Provide open consideration to more than one vendor using evaluation criteria that may include, but are not limited to, cost, quality, service, compatibility, product reliability, operating efficiency, expansion potential, vendor experience and reliability, commitment to support regional business development, and support for innovation.

(c) The Purchasing Department shall have the authority to enter into price agreements through direct negotiation in the number and method deemed most appropriate to meet the needs of the University.

(13) The University Purchasing Department may join buying cooperatives on behalf of the University departments with other governmental or educational institutions. The University and its departments may purchase from the negotiated or competitively bid pricing garnered by the particular co-ops, with authorization by the appropriate personnel, without the use of competitive procedures, regardless of dollar amount.

(14) The University Purchasing Department may enter into retainer agreements with vendors using appropriate competitive procedures that take into account, at a minimum, the qualifications and reputation of the vendors, price structure, ability and willingness to respond to requests from one or more colleges and universities, location, and such other factors as authorized personnel deem appropriate.

(a) A Request for Proposals (RFP) or Invitation to Bid (ITB) process shall be used in selecting vendors for specific retainer agreements;

(b) Vendors may be selected to provide specific goods or services based on availability, responsiveness, quality, geographic location, historic performance, price, etc. Selection of vendors from the retainer agreement may be based on quotes or on the specific nature of the goods or services to be provided. The agent or officer should solicit prices from at least two vendors under the retainer agreement, or document the reason for not doing so;

(c) Authorized personnel shall maintain appropriate records of the competitive process used to select a vendor from the list of vendors with current retainer agreements in force at the time the selection is made.

(15) Consistent with these rules, the University Purchasing Department may enter into requirements contracts on behalf of the University departments to supply all of the University's requirements for specific goods, equipment, or services that arise during a specified time period.

(16) The University Purchasing Department may negotiate directly with a vendor listed on a qualified vendor list if only one vendor meets the University's or its department's needs and if the RFI, RFQ, or ITB informed potential vendors that direct negotiation could occur. However, if more than one vendor can meet the University's or its department's needs, solicitations shall follow the appropriate competitive procedures, which may be limited to those listed as qualified vendors.

(17)(a) Notwithstanding any of the procedures in this rule, the University Purchasing Department is authorized to develop alternative formal procurement methods that meet the following objectives:

(A) Respond to innovative business and market methods; or

(B) Contribute to University productivity improvement and process redesign; or

(C) Result in comprehensive cost effectiveness and productivity for the University; and

(b) Provide open consideration to more than one vendor using evaluation criteria that may include, but are not limited to, cost, quality, service, compatibility, product reliability, operating efficiency, expansion potential, vendor experience and reliability, commitment to support regional business development, and support for innovation.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0228

Procurement of Telecommunications Equipment and Services

The Oregon State Board of Higher Education has adopted the following Procurement of Telecommunications Equipment and Service procedures in OAR 580-040-0228. These rules are applied to procurement and contracting as defined below. The procurement of telecommunications equipment and services shall be in accordance with the provisions of Oregon Laws 1995, Chapter 634, and any delegations or other agreements made between OSSHE and the Department of Administrative Services. These delegations and agreements shall include, but not be limited to, the following:

(1) Implementation of Oregon Laws 1995, Chapter 634, will not impede cooperative efforts using local expertise and infrastructure to enhance local and regional economic development.

(2) With regard to OSSHE, the following matters are exempt from the Department of Administrative Services' authority under Oregon Laws, Chapter 634:

(a) Broadcasting licensed by the Federal Communications Commission or its successor;

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- (b) Two-way radio systems operated as part of campus security;
- (c) Local Area Networks except to the extent that they must be able to communicate with other networks outside OSSHE and its institutions;
- (d) On-campus networks except for the replacement and/or major enhancement of the telephone system;
- (e) Contracts or grants for projects in which the contracting or granting entity requires use of a certain type of communication, equipment, or application;
- (f) Research into telecommunications that expands or extends knowledge rather than the commercial application of that knowledge; and
- (g) Development and offering of courses intended to be promulgated by electronic distance education technology, including the Internet.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0230

Exemptions

Personal/Professional Services Contracts are not included under this exemption. As stated in OAR 580-040-0210(4)(A), Personal/Professional Services Contract screening and selection is covered under OAR 580-040-0100.

(1) The University and its Departments need not follow, regardless of value, competitive procedures for the following:

(a) Contracts for the provision of educational services.

(b) Single seller/sole source goods and services. When purchasing from a single/sole source, the University or its departments shall document findings to support the determination that the only suitable service or product is available from only one seller.

(c) Pilot programs. The University Purchasing Department may enter into pilot programs on behalf of the departments for a fixed, short-term period, not to exceed one year, to evaluate the need for and effectiveness of a good, service or program. At the conclusion of the pilot program, if the program is to be continued, it shall be placed under an appropriate, approved procurement process.

(A) Authorized personnel shall maintain appropriate records of the process used to develop and enter into the pilot program, including justification of price when a direct negotiation process is used.

(B) Pilot programs may be entered into to:

(i) Respond to innovative business and market methods; or

(ii) Contribute to University productivity improvement and process redesign; or

(iii) Result in comprehensive cost effectiveness and productivity for the University; and

(d) Brand name goods and services or product prequalification. The University and its departments may specify brand name in the procurement of goods and services if that particular product or service has specific documentable attributes not found in other products. In addition, when specific design or performance specifications must be met for a product to be purchased, the University may specify a list of qualified products by reference to the prequalified product(s) of particular manufacturers or sellers.

(e) Advertising and media services contracts.

(f) Price-regulated goods and services. The University or its departments may, regardless of dollar value, contract for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

(g) Purchases under federal contracts. When the price of goods and services has been established by a contract with an agency of the federal government pursuant to a federal contract award, the University or its departments may purchase the goods and services in accordance with the federal contract without subsequent competitive bidding. In addition, specific equipment that is expressly required under the terms of the contract and that is only available from one source is exempt from competitive procedures.

(h) Copyrighted materials. The University and its departments may purchase copyrighted materials without competitive bid and regardless of dollar amount. Copyrighted materials covered by this exemption may include, but are not limited to, textbooks, workbooks, curriculum kits, reference materials, and audio, visual, and electronic media.

(i) Investment contracts.

(j) Food contracts. This exemption shall apply exclusively to the procurement of food and food-related products.

(k) Periodicals, library books, and library materials.

(l) Maintenance services for the useful life of goods. The University or its departments may purchase maintenance services for the useful life of goods directly from the vendor of those goods.

(m) Used personal property.

(n) Goods purchased for resale.

(o) Intercollegiate athletic programs. The University and its departments may specify a product by brand name or make or the products of particular manufacturers or sellers when procuring equipment and supplies used in intercollegiate or interscholastic athletic programs.

(p) Media for athletic programs.

(q) Athletic contest agreements.

(r) Cadaveric organs.

(s) Designated conferences and workshops' hotel sites.

(t) Dues, registrations, and membership fees.

(u) Gasoline, diesel fuel, heating oil, lubricants, and asphalt.

(v) Purchases of supplies, maintenance, and services for ocean-going vessels when they are in other than home port.

(w) Equipment repair and overhaul.

(x) Goods and services purchased in foreign countries.

(2) Exemptions from competitive procedures may be granted for a particular contract or contracts not otherwise exempted under these rules by the President or Vice President for Finance and Administration of the institution. Sufficient documentation must be retained regarding the need for such exemptions.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0235

Basis for Awarding of Contracts

The University and its departments shall award contracts based on various factors that shall be identified in the notice of contract. Such factors may include, but not be limited to price; quality; life cycle costing; vendor experience and reliability; support for regional business development; support for productivity innovation; performance specifications; and/or timeliness.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0240

Determination of Contractual Terms and Conditions

Except to the extent the University has established mandatory contract provisions, the University and its departments are authorized to determine the terms and conditions of solicitations and contracts, provided such terms and conditions are not contrary to statutory or regulatory requirements applicable to the University.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0245

Contract Amendments (Including Change Orders and Extra Work)

An amendment for additional work or product that is reasonably related to the scope of work under the original contract, including change orders, extra work, field orders, or other change in the original specifications that increases the original contract price or length of time may be made with the contractor without competitive bidding provided that the amendment does not materially alter such a contract or that the increase in the value of the contract does not change the required method of procurement.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0255

Pre-Bid and Pre-Proposal Conferences

(1) Pre-bid or pre-proposal conferences may be scheduled. Each pre-bid and pre-proposal conference shall be described in the corresponding solicitation document as "voluntary" or "mandatory." If such a conference is designated as "mandatory," it shall be required for a bidder or proposer to attend in order to submit a bid or proposal for the corresponding contract.

(2) The bidder or proposer may authorize a representative other than himself/herself to attend the pre-bid or pre-proposal conference.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

ADMINISTRATIVE RULES

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0260

Acceptance of Bids and Proposals by Facsimile or Electronic Data Interchange

The University or its departments may determine if it is appropriate for bids and proposals to be accepted by facsimile or Electronic Data Interchange. The University or its departments shall establish the conditions for solicitations, either individually or by type of solicitation. When the University or its departments choose to accept bids or proposals by facsimile, it shall follow the requirements outlined in OAR 137-030-0013(3); however, bids or proposals wherein a deposit is required will not be acceptable by facsimile or EDI. When the University or its departments or any of its institutions chooses to accept bids or proposals by Electronic Data Interchange, it shall follow the requirements outlined in OAR 137-030-0014(4).

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0275

Responsible Bidders; Responsibility Investigation

(1) A "responsible bidder or proposer" is an individual, firm, corporation, or entity who has the capability in all respects to perform fully the contract requirements, the integrity and reliability that will assure good faith performance, and who has not been disqualified by OSSHE or the University Purchasing Department.

(2) The University and its departments have the right, prior to awarding any public contract, to make such investigation as is necessary to determine whether a bidder is responsible.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0277

Responsive and Nonresponsive Bids or Proposals; Acceptance and Rejection

(1) A "responsive bid or proposal" is one that complies in all material respects with an Invitation to Bid or Request for Proposals and with all prescribed bidding and proposal procedures and requirements. A "nonresponsive bid or proposal" is one that does not meet all material aspects of an Invitation to Bid or a Request for Proposal or that does not comply with all prescribed bidding and proposal procedures and requirements.

(2) The University and its departments shall accept, and consider for award, only those bids or proposals that are responsive as defined in this rule. Nonresponsive bids or proposals shall be rejected.

(3) Nothing in this rule shall limit the ability of the University or its departments to monitor contractor or vendor performance during the term of a contract.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0280

Rejection of Individual Bids or Proposals

(1) This rule applies to rejections, in whole or in part, of individual bids or proposals. The University and its departments may reject, in whole or in part, any bid or proposal not in compliance with all prescribed bidding procedures and requirements, and may reject for good cause any bid or proposal upon a written finding by the University or its departments that it is in the public interest to do so.

(2) Reasons for rejecting a bid or proposal include but are not limited to finding that:

(a) The bidder or proposer has not prequalified as required in the Invitation to Bid or Request for Proposal, or is disqualified under ORS 200.075, 279.037, or these rules; or

(b) The bidder or proposer has been declared ineligible by the Commissioner of the Bureau of Labor and Industries under ORS 279.361; or

(c) The bid or proposal is nonresponsive, that is, it does not conform in all material respects to solicitation document requirements, including all prescribed public procurement procedures and requirements; or

(d) The supply, service, or construction item offered in the bid or proposal is unacceptable by reason of its failure to meet the requirements of the

solicitation documents or permissible alternates or other acceptability criteria set forth in the solicitation documents; or

(e) The bidder or proposer is nonresponsible, i.e., is not likely to be capable of satisfying the terms and conditions of the public contract in a timely manner due to financial incapacity, inability to obtain bonding, loss of license, poor performance history, lack of necessary equipment, lack of key personnel of sufficient experience, or other objective cause; or

(f) The bidder or proposer within the last five years has been found, in a civil, criminal, or administrative proceeding, to have committed or engaged in fraud, misrepresentation, price-rigging, unlawful anti-competitive conduct, or similar behavior; or

(g) The bidder or proposer has been determined responsible (i.e., adjudicated by a court, or as determined in writing by OSSHE or the University in the case of a public contract) for more than one breach of a public or private contract or contracts in the last three calendar years before the scheduled date of the bid or proposal opening; or

(h) The bid or proposal security has not been submitted or properly executed as required by the solicitation documents; or

(i) The bidder or proposer has not met the emerging small business, disadvantaged business, minority business, and women business enterprise requirement, if any, established by OSSHE or the University, and has not made a good faith effort in accordance with ORS 200.075 to comply with the requirements prior to the time bids or proposals are opened; or

(j) The bidder or proposer has failed to certify in accordance with OAR 576-008-0292(3); or

(k) Other circumstances of the particular bid or proposal, or bidder or proposer, indicate that acceptance of the bid or proposal would impair the integrity of the selection process or result in an imprudent contract by the University or its departments.

(3) For purposes of this rule, the business registry of bidders or proposers shall be subject to scrutiny, i.e., confirmation of ownership or identification of officers and directors, in order to identify previously disqualified bidders or proposers, and thus prevent any subterfuge, change of apparent ownership, or other adjustments in formal appearance, to avoid application of this rule or of the disqualification provisions of ORS 279.037 to 279.045 and these rules.

(4) All bidders or proposers whose bid or proposal is rejected shall be notified in writing by certified mail of its bid or proposal rejection and the reason therefor.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0282

Rejection of Bid or Proposal Protest Procedure

All protests of bid or proposal rejection are limited to the following issues and filing times.

(1) Any bidder or proposer may protest rejection of its bid or proposal. Unless a different deadline is specified in the solicitation, a bidder or proposer who claims to have been adversely affected or aggrieved by the rejection of its bid or proposal shall have seven business days to submit a written protest after being notified of such rejection. If notice is sent by U.S. mail, the bidder or proposer shall have ten days from the date the rejection notice is postmarked in which to submit a written protest. To be adversely affected or aggrieved, the bidder or proposer must demonstrate that it would be an eligible bidder or proposer, except that the University committed a material violation of its standards in evaluating the bidder/proposer or bid/proposal when it made the determination to reject. The University shall not consider a protest submitted after a deadline established in this rule, or the deadline provided in the solicitation, if different.

(2) The Director of Business Services or designee shall have the authority to settle or resolve a written protest submitted in accordance with subsection (1) of this rule, and shall issue a Final Agency Order. Contract award shall not be made prior to issuance of the Final Agency Order.

(3) Judicial review of the University's disposition of a written protest submitted in accordance with this rule may be available pursuant to the provisions of ORS 183.484.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0285

Bidder or Proposer Disqualification

(1) As used in this rule:

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(a) "Disqualification" means the debarment, exclusion, or suspension of a person from the right to submit bids or proposals in response to the University or its departments' solicitations for a reasonable, specified period of time named in the order of disqualification. A contractor or vendor so debarred, excluded, or suspended is disqualified.

(b) "Person" means an individual, partnership, or corporation. Disqualification attaches to and follows the individual, so that an individual who is a partner in a partnership or an officer or principal in a corporation that is disqualified may not reform the business entity as a way of avoiding the disqualification.

(2) A bidder or proposer may be disqualified if they have repeatedly breached contractual obligations to public and private contracting agencies.

(3) As provided in ORS 200.075, the following are grounds for suspension of a bidder's, proposer's, contractor's, or subcontractor's right to bid, propose, or participate in a public contract:

(a) If the person has entered into any agreement representing that a disadvantaged, minority, women, or emerging small business enterprise, certified pursuant to ORS 200.055, will be performing or supplying materials under a public improvement contract without the knowledge and consent of the certified enterprise;

(b) If a person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any subcontractor that is certified disadvantaged, minority, women, or emerging small business enterprise;

(c) If the person who is not a minority, women, or emerging small business entity uses a disadvantaged, minority, women, or emerging small business enterprise to perform contracting services or provide supplies under a public improvement contract to meet an established DBE/MBE/WBE/ESB goal, when the enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the contract.

(4) The University or any of its departments may make such investigation as is necessary to determine whether there are grounds for disqualifying a person. If a bidder or proposer, or prospective bidder or proposer, fails to supply such information promptly as requested by the University or its departments, such failure is grounds for disqualification.

(5) Any information voluntarily submitted by a bidder or proposer, or prospective bidder or proposer, pursuant to an investigation under section (4) of this rule, or in a prequalification statement, or in a prequalification request submitted pursuant to these rules, shall be deemed a trade secret pursuant to ORS 192.501(2), if requested by the person submitting the information and verified to be a trade secret by the University or its departments.

(6) The bidder or proposer, or prospective bidder or proposer, will be notified in writing by personal service or certified mail of the University's or its departments' decision to disqualify the person from bidding or proposing with the University or its departments. The notice shall contain:

(a) The effective date of the disqualification and the effective period of disqualification;

(b) The grounds for disqualification from bidding or proposing; and

(c) A statement of the person's appeal rights and applicable appeal deadlines.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0287

Bidder or Proposer Disqualification Protest Procedure

All protests of bidder or proposer disqualification are limited to the following issues and filing times.

(1) If a bidder or proposer wished to protest the University decision to disqualify, the bidder or proposer must notify the University within three business days after receipt of the notification.

(2) The Director of Business Services or designee shall arrange for a hearing. Contract award (if any is pending while the disqualified entity is appealing) shall not be made prior to the issuance of a written Final Agency Order.

(3) Judicial review of the University's disposition of a written protest submitted in accordance with this rule may be available pursuant to the provisions of ORS 183.413 through 183.470 and 183.482 through 183.500.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0290

Purchasing Policies Governing the Acquisition of Goods and Services from Qualified Rehabilitation Facilities

The University and its departments shall purchase goods and services from Qualified Rehabilitation Facilities in accordance with the provisions of ORS 279.835 to 279.855, and OAR 125-030-0015.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0292

Affirmative Action; General Policy

The following Affirmative Action General Policy adopted by the State Board of Higher Education in OAR 580-040-0292 shall apply to University purchasing and contracting.

(1) The general policy of the University and its departments shall be to expand economic opportunities for Minority Business Enterprises, Women Business Enterprises, and Emerging Small Businesses by offering the contracting and subcontracting opportunities available through the University and its departments' contracts. Notice of all contract and bid request solicitations using the formal process outlined in OAR 580-040-0225 shall be provided to the Advocate for Minority, Women and Emerging Small Business and the Oregon Department of Administrative Services for the Oregon Opportunity Register and Clearinghouse when any other solicitation is sent.

(2) The University and its departments shall not knowingly contract with or procure goods or services with any organization, business entity, or individual that discriminates on the basis of age, disability, national origin, race, marital status, religion, sex, or sexual orientation.

(3) Bidders and proposers shall certify, as part of the bid or proposal documents accompanying the bid or proposal on a public contract, that such bidder or proposer has not discriminated against minority, women, or emerging small business enterprises in obtaining any required subcontracts.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

576-008-0295

Record Keeping Requirements

These record keeping requirements, adopted by the State Board of Higher Education in OAR 580-040-0295 shall apply to University purchasing and contracts.

(1) Documentation of all purchasing and contracting transactions will be made available for inspection by OSSHE Internal Audit Division upon request.

(2) Authorized personnel shall maintain documentation, whether written or electronic, regarding all purchasing and contracting transactions.

(a) Except where other requirements exist by contract or grant terms and conditions, for purchases not exceeding \$5,000, only a vendor invoice must be retained.

(b) For purchases where the cost exceeds \$5,000 but does not exceed \$50,000, the following must be retained:

(A) The method of procurement;

(B) The names of firms/individuals and cost estimates considered;

(C) The basis for selection or awarding of contract;

(D) Other information pertinent to the solicitation; and

(E) Any other documentation required by these rules.

(c) For purchases where the estimated cost exceeds \$50,000, the following must be retained:

(A) The method of procurement;

(B) A copy of the announcement requesting bids or proposals;

(C) The names of firms/individuals and cost estimates considered;

(D) The basis for selection or awarding of contract;

(E) A copy of the resulting contract and any subsequent amendments;

(F) Other information pertinent to the solicitation; and

(G) Any other documentation required by this rule.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 8-1997, f. & cert. ef. 9-11-97; Suspended by OSU 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

ADMINISTRATIVE RULES

Oregon University System, Southern Oregon University Chapter 573

Rule Caption: Discrimination, Duties of Grievance Officer.
Adm. Order No.: SOU 1-2008
Filed with Sec. of State: 3-14-2008
Certified to be Effective: 3-14-08
Notice Publication Date: 2-1-2008
Rules Amended: 573-035-0040
Subject: Discrimination, Duties of Grievance Officer.
Rules Coordinator: Treasa Sprague—(541) 552-6319

573-035-0040

Duties of Grievance Officer

(1) Informal Resolution of Grievances: The Grievance Officer helps complainants formulate and follow up complaints of alleged prohibited discrimination. The Grievance Officer may assist in conciliation and informal resolution of the grievance, if informal resolution appears possible and is desired by the complainant.

(2) Formal Complaints: If the complainant does not wish to pursue the complaint informally or attempted informal resolution is unsatisfactory, the grievant may submit the complaint in writing to the Compliance Officer. The Grievance Officer may assist the complainant in this process. Formal complaints must set out the specific facts of the complaint, including complainant's suggested resolution of the matter, and be signed by the complainant. The complainant's signature constitutes personal verification that the complaint is accurate and complete.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & OAR 580-015; Title VI and Title VII of the Civil Rights Act; Section 504 of the Rehabilitation Act of 1973; Americans with Disabilities Act of 1990; Equal Pay Act; Executive Order 11246; Age Discrimination Act of 1975.

Hist.: SOSC 1-1993, f. & cert. ef. 2-19-93; SOU 2-2000, f. & cert. ef. 6-9-00; SOU 1-2008, f. & cert. ef. 3-14-08

Rule Caption: Code of Conduct, Administration of Grievances, Grievances.

Adm. Order No.: SOU 2-2008
Filed with Sec. of State: 3-14-2008
Certified to be Effective: 3-14-08
Notice Publication Date: 2-1-2008
Rules Amended: 573-075-0100

Subject: Code of Conduct, Administration of Grievances, Grievances.

Rules Coordinator: Treasa Sprague—(541) 552-6319

573-075-0100

Grievances

A grievance is a wrong, real or fancied, thought to be grounds for a complaint. In the spirit of the SOU community, a grievance is best settled between the two parties — student/student, student/faculty, or student/administrator. The chief student affairs officer or designee is responsible to assist in the resolution of grievances. There are two types of grievances:

(1) Discrimination grievance: Alleged violations of federal laws prohibiting discrimination;

(a) This grievance must be filed within 180 days of the incident. Complaints of discrimination within the educational program of the University will be filed with the University grievance officer (the chief student affairs officer or other person designated by the Vice President for Student Affairs or by the President). For procedures governing discrimination complaints please refer to OAR chapter 573, division 35. A copy of these procedures is available in the Office of Student Affairs;

(b) Definitions: For the purposes of this policy, the following definitions will be used:

(A) Prohibited discrimination means any act that either in form or operation, whether intended or unintended, differentiates among persons on the basis of age, disability, national origin, race, color, marital status, religion, sex, or sexual orientation;

(B) Sexual harassment means any sexual advance, any request for sexual favors, or other verbal or physical conduct of a sexual nature when:

(i) Submission to the advances, request or conduct is made either explicitly or implicitly a term or condition of employment or participation in an academic program or activity;

(ii) Submission or rejection of the advances, request or conduct is used as a basis or condition for employment or academic decisions affecting the student; or

(iii) Such conduct unreasonably interferes with the work or academic performance of the student because it creates an intimidating, hostile, or offensive work or academic environment for the student who is the object of the advance, request, or conduct and a reasonable person in that student's position would have been similarly affected.

(C) Other prohibited harassment includes verbal or physical conduct by an individual based on age, disability, national origin, race, color, marital status, religion, or sexual orientation, which creates an intimidating, hostile or offensive working or academic environment that interferes with a second individual's work or academic performance and a reasonable person in that same situation would have been similarly affected.

(c) The grievance officer will be consulted to determine possible avenues of resolution, including pursuing the formal grievance process.

(2) Nondiscrimination grievance: Complaints that do not fall within the above definitions;

(a) This complaint must be filed within thirty (30) days following the incident. Exceptions to this timeline may be granted by the dean of the school in which the complaint is said to occur. If the student wishes to pursue informal resolution of the grievance, the student will speak to the student/faculty/or administrator with whom s/he has the complaint. If the results are not satisfactory, the student will take the complaint to that person's supervisor (or department head). If not satisfied, and the complaint is with a faculty member, the complaint will next be addressed by the dean of that school. All reasonable attempts to resolve the complaint will be made. The grievance officer will be consulted to determine possible avenues of resolution, including initiation of the formal grievance process;

(b) If the student wishes to file a formal grievance, s/he may do so at any time in the process. S/he must file a written complaint on the form which is available in the Office of Student Affairs. The grievance officer will give a copy of the complaint to the department chair, who in turn will give a copy to the involved. The grievance will be heard within fourteen (14) days, with the student and faculty receiving notice of the hearing at least seven (7) days in advance. If there is no appropriate standing committee, the grievance officer will call together a grievance committee. Appropriate standing committees include: Academic Standards Committee, Business Services Student Appeals Committee, Family Housing Advisory Committee, Financial Aid and Awards Committee, Housing Policy Committee, Student Affairs Committee. The student, in consultation with the grievance officer, will decide which committee is appropriate.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & OAR 580-015

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04; SOU 2-2008, f. & cert. ef. 3-14-08

Rule Caption: Academic Standards/Grading Grievance Policy, Regulation.

Adm. Order No.: SOU 3-2008

Filed with Sec. of State: 3-14-2008

Certified to be Effective: 3-14-08

Notice Publication Date: 2-1-2008

Rules Amended: 573-095-0010

Subject: Academic Standards/Grading Grievance Policy, Regulation.

Rules Coordinator: Treasa Sprague—(541) 552-6319

573-095-0010

Regulation

(1) To provide a process whereby a student may grieve the process for determining a grade.

(2) Students may attempt an informal resolution to a grading grievance. The student shall follow whatever procedure has been established by the school that sponsored the class.

(3) If a student chooses not to resolve the dispute informally, or if attempted informal resolution is unsatisfactory, the student may file a grading grievance with the Academic Appeals Committee (AAC). The grievance must be in writing and may include supporting documentation such as the class syllabus.

(4) The AAC shall consist of 5 members, at least 3 of whom shall be the teaching faculty. These members will come from the existing Academic Standards Committee. One member may be a student and will be appointed by the Dean of Students.

(5) The AAC will convene a meeting and invite the student and the instructor. Each side will have a chance to present their side.

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(6) The AAC will consider the written grievance, the statements made by both parties and any other related information to reach a decision.

(7) The student may grieve the process used to arrive at a grade, but may not grieve the grade itself. The AAC will not determine if a grade is justified by the quality of the work submitted by the student. Rather, the AAC will determine whether the process used to determine the grade was flawed.

(8) The AAC will render a decision within 10 days of the grievance meeting. Their decision is final.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: SOU 1-2005, f. & cert. ef. 4-11-05; SOU 3-2008, f. & cert. ef. 3-14-08

Oregon University System, University of Oregon Chapter 571

Rule Caption: Contracting and Purchasing Procedures (UO).

Adm. Order No.: UO 1-2008(Temp)

Filed with Sec. of State: 2-19-2008

Certified to be Effective: 2-19-08 thru 8-16-08

Notice Publication Date:

Rules Suspended: 571-040-0010, 571-040-0015, 571-040-0020, 571-040-0030, 571-040-0040, 571-040-0050, 571-040-0060, 571-040-0070, 571-040-0080, 571-040-0100, 571-040-0201, 571-040-0251, 571-040-0261, 571-040-0380, 571-040-0382, 571-040-0390, 571-040-0400, 571-040-0410, 571-040-0420, 571-040-0430, 571-040-0440, 571-040-0450, 571-040-0460

Subject: The Oregon University System has adopted new temporary rules for procurement, contracting, construction, purchase and sale of real property (Division 60, 61, 62, and 63) Under these new rules, individual institutions no longer have authority to adopt their own rules pertaining to these topics. These rules will be suspended until they are repealed upon permanent adoption of the new OUS rules.

Rules Coordinator: Marcia Stuart—(541) 346-5749

571-040-0010

Applicability of Chapter 571, Division 40; Policymaking Authority

(1) Except for OAR 571-040-0015 and 0020, the rules set forth in chapter 571, division 40, do not apply to:

(a) Transactions involving an interest in real property, including but not limited to, contracting with persons or entities to operate retail establishments in facilities owned or controlled by the University.

(b) Licenses or permits to use or gain access to real property or improvements thereon, regardless of the purpose for the license or permit.

(c) Public improvement contracts (facilities contracting) and contracts with architects, engineers, and similar consultants where the services are related to a public improvement project.

(d) Material transfer agreements, licenses by the University of inventions, software, trademarks, trade secrets, know-how, or copyrighted materials, confidentiality agreements, and acquisition of an interest in intellectual property for management, licensing, or dissemination by the University.

(e) The provision of services or goods by a University unit.

(f) The conveyance by the University of any interest in personal property, tangible or intangible, or real property.

(g) Grants, sponsored research agreements, and the like.

(h) Academic agreements, including but not limited to, student and faculty exchange agreements, affiliation agreements, internship agreements, clinical practicum agreements, study abroad agreements, dual enrollment agreements, transfer agreements, and consortium agreements.

(i) Employment agreements.

(j) Endowment agreements, gift agreements, and the like.

(k) All other contracting by the University, except to the extent expressly set forth in these rules.

(2) The Vice President for Finance and Administration or designee may promulgate internal management directives and policies necessary or appropriate to implement the rules set forth in chapter 571, division 40.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0015

Signature Authority; Execution of Instruments

(1) Except as set forth herein, the Vice President for Finance and Administration has signature authority for all instruments covered by these rules and for those described in OAR 571-040-0010(1)(a)–(h), and (k) and may also delegate such authority pursuant to a written memorandum or policy or as expressly set forth in these rules. Such delegations are limited to specific instrument types and dollar amounts. Except as set forth in these rules or as delegated by the Vice President for Finance and Administration, no one has authority to execute an instrument covered by these rules on behalf of the University. Instruments executed or agreements entered into without authority are voidable at the sole discretion of the University. Failure to follow this rule may result in personal liability and other consequences.

(b) The General Counsel to the Oregon University System or designee has authority to execute all licenses of University-owned or -controlled inventions, software, trade secrets, know-how, or copyrighted materials, material transfer agreements, and related instruments.

(c) Other officers of the University may execute instruments as authorized by law.

(2) Special Rule for “Click-Wrap” Licensing of Computer Software: The University recognizes that much computer software is purchased via Internet download under “click-wrap” or “click-to-agree” licenses, which may include payment and other terms. To the extent that such licenses are not negotiable and are available to the general public on the same terms and conditions, all regular University employees, with the approval of an authorized individual, are authorized to purchase computer software using such licenses. Authority under this provision is limited to \$5000.00 per purchase. The approval of an authorized individual is not required if there is no charge for the software.

(3) Contracts (a) which are entered into by an unauthorized individual or (b) which exceed the authority of an otherwise authorized individual or (c) which are not authorized under these rules shall be voidable at the sole discretion of the University or they may be ratified by the University in its sole discretion. If work is performed or payment made prior to execution, any contract may be voided or ratified by the University in its sole discretion.

(4) Authorized individuals shall be responsible for ensuring that the proper procedures are followed for all institutional purchases or contracts. The University may take appropriate action in response to unauthorized expenditures or actions including, but not limited to, providing educational guidance, imposing disciplinary measures, and holding individuals personally liable for such expenditures or actions.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0020

Code of Ethics

(1) The following Code of Ethics shall apply to University employees in relation to contracting and purchasing. Employees shall:

(a) Give first consideration to the objectives and policies of the Board of Higher Education, OUS and the University;

(b) Strive to obtain the best value for expenditures;

(c) Fairly consider prospective contractors insofar as state or federal statutes and institutional rules and policies require;

(d) Conduct business in an atmosphere of good faith;

(e) Demand honesty in representations made by prospective contractors;

(f) Encourage all segments of society to participate by supporting emerging small, disadvantaged, and minority-owned and women-owned businesses, and Qualified Rehabilitation Facilities;

(g) Comply with the applicable provisions of ORS Chapter 244 and other applicable rules and policies on conflict of interest that may be more restrictive;

(h) Refrain from having financial interests incompatible with the impartial, objective, and effective performance of duties. Activities that may create a conflict of interest must be addressed in accordance with the procedures outlined in the Oregon University System’s Internal Management Directives and other applicable rules and policies;

(i) Receive the written consent of the originator of proprietary ideas and designs before using them; and

(j) Foster fair, ethical, and legal trade practices.

(2) This code is for the University’s internal use only and creates no obligations enforceable by contractors, proposers, bidders, or other parties

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doing business with the University, nor may it be used by contractors, proposers, bidders, or other parties doing business with the University who are challenging actions taken by the University or its officers, employees, or agents. This code may not be the only statement on ethics applicable to an employee.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0210, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0030

Applicable Model Public Contract Rules

The University may use any or all of the Attorney General's Model Public Contract Rules as guidelines for interpretation of these rules or may incorporate some or all of them into a Solicitation Document, contract, or other document.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0243, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0040

Definitions

The following definitions shall apply to OAR chapter 571, division 40, unless the context requires otherwise or except as stated:

(1) Days: Calendar days unless otherwise specified.

(2) Disadvantaged Business Enterprise (DBE): As defined in ORS 200.005.

(3) Disqualification or Disqualify: The preclusion of a person or entity from contracting with the University, OUS, State Board of Higher Education, or the State of Oregon for a period of time.

(4) Emergency: an unexpected, serious situation requiring prompt action.

(5) Emerging Small Business (ESB): as defined in ORS 200.005
Entity: any governmental body or agency, association, sole proprietorship, partnership, corporation, limited liability company, or other organization, however described or named and regardless of legal status, other than a Person.

(6) Minority Business Enterprise (MBE): As defined in ORS 200.005.
OUS: Oregon University System. Person: A natural person.

(7) Qualified Rehabilitation Facility (QRF): A nonprofit organization that trains and puts Oregonians with disabilities to work.

(8) Qualified Contractor List: A list of persons or entities identified from a Solicitation Document, or other request that are able to provide specific goods or services. Inclusion on a Qualified Contractor List does not indicate that a Person or Entity has entered into a contract with the University.

(9) Responder: A person or entity submitting a bid, proposal or other response to a Solicitation Document.

(10) Response: A bid, proposal or other response to a Solicitation Document.

(11) Responsive Response: A Response that substantially complies with applicable solicitation procedures and requirements in the Solicitation Document.

(12) Request for Information (RFI): a written document soliciting information regarding goods or services. An RFI is not a Solicitation Document.

(13) Request for Qualifications (RFQ): A written document soliciting information regarding the qualifications of providers of goods or services. An RFQ is not a Solicitation Document.

(14) Single Seller or Sole Source: The only provider of a particular good or service reasonably available.

(15) Solicitation Document: An invitation to bid (ITB), request for proposal (RFP) or other document seeking a bid, proposal, or other Response where the University intends that a contract will result.

(16) Used Personal Property: personal property used by a previous owner or user and recognized in the relevant trade or industry as "used" at the time of University purchase. It generally does not include property or equipment if the University was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement. This definition does not relate to surplus property disposal. Women Business Enterprise (WBE): As defined in ORS 200.005.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0230, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0050

Basis for Awarding of Contracts

The University shall select contractors and award contracts based on such factors as are identified in the Solicitation Document and such other factors as are reasonable under the circumstances. The Vice President for Finance and Administration or designee may prescribe the terms and conditions of contracts and documents required in support of contracts.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0270, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0060

Contract Amendments and Expired Contracts

A contract amendment that is reasonably related to the scope of work under a contract may be entered into with the contractor without application of OAR chapter 571, division 40. Lapsed contracts may be revived and reinstated upon the approval of the Vice President for Finance and Administration or designee.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0290, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0070

Pre-Response Conferences

(1) Pre-Response conferences may be scheduled by the University. Each such conference shall be described in the Solicitation Document as voluntary or mandatory. If such a conference is designated as mandatory, a Responder must attend in order to submit a Response.

(2) A Responder may authorize a representative to attend the pre-Response conference.

(3) The University determines the content of any conference held under this rule.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0310, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0080

Acceptance of Responses and Correspondence

The University may choose to accept Responses and correspondence by any means and on any conditions authorized in the Solicitation Document, including by electronic mail or facsimile machine.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0320, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0100

Screening and Selection for Professional Services Contracts

(1) The University periodically requires an individual or firm to perform professional services. OAR 571-040-0100 sets forth the screening and selection processes to be used for all such contracts and, in the case of the University of Oregon, supersedes OAR 580-040-0100.

(2) The University may contract for professional services when it is desirable or prudent and not prohibited by law.

(3) "Professional Services Contract" means a contract for professional services performed by an independent contractor. Compensation under a Professional Services Contract may be on an hourly basis, a flat fee basis, a not-to-exceed amount, or any other compensation arrangement that serves the University's best interests.

(4) Formal Selection Procedure: This procedure will be used whenever the estimated payment to the contractor during the contract term is \$200,000 or more or when the Vice President for Finance and Administration or designee determines that the formal selection procedure is appropriate. The Vice President for Finance and Administration or designee may grant an exemption from the formal selection procedure for

ADMINISTRATIVE RULES

sufficient cause. The amount of a contract may not be manipulated to avoid the formal selection procedure.

(a) **Announcement:** The University, through the Vice President for Finance and Administration or designee, will give notice of intent to contract for professional services in a trade periodical or newspaper of general circulation or on the University's website. The notice may also be sent to potential contractors and any other interested party. The notice shall include a description of the proposed project, the scope of the services required, project completion dates, if any, a description of special requirements, if any, and any other information deemed appropriate by the University. The notice will invite qualified prospective contractors to request an application. The notice will specify when and where the application may be obtained, to whom it must be returned, and the closing date. The University will provide notices to the Office of Minority, Women and Emerging Small Business.

(b) **Application:** The application, which is considered a Solicitation Document, will consist of a statement that describes the prospective contractor's credentials, performance data and other information sufficient to establish the contractor's qualification for the project, as well as any other information requested by the University.

(c) **Initial Screening:** The University will evaluate the qualifications of all Responders and select one or more prospective contractors who will best meet the University's needs.

(d) **The Final Selection Procedure:**

(A) **Interviews:** The University may interview, through any appropriate medium, the finalists selected from the initial screening.

(B) **Award of Contracts:** The University will make the final selection based on such criteria as the University deems appropriate. The University may award more than one contract and may develop a roster of contractors qualified to perform various types of services from which the University may choose without the need to undertake one of the selection procedures set forth in this rule.

(5) **Informal Selection Procedure.** This procedure may be used when the estimated payment for the proposed services to be performed by the contractor exceeds \$50,000 but is less than \$200,000 or when the Vice President for Finance and Administration or designee determines that use of the informal selection procedure is appropriate. The Vice President for Finance and Administration or designee may grant an exemption from the informal selection procedure for sufficient cause. The amount of a contract may not be manipulated to avoid the informal selection procedure.

(a) **Selection:** The University will contact a minimum of three prospective contractors believed to be qualified to offer the sought-after services. If the University determines that fewer than three such contractors are reasonably available, the University need not contact three. An estimated fee or the basis for determining the fee will be requested. The University may award any number of contracts and may develop a roster of contractors qualified to perform various types of services from which the University may choose without the need to undertake one of the selection procedures set forth in this rule.

(6) **Professional Services Contracts not exceeding \$50,000:** The University may enter into Professional Services Contracts not exceeding \$50,000 without following the procedures identified elsewhere in this rule. The amount of the contract is not to be manipulated to avoid the need for informal or formal procedures. The University may award any number of contracts and may develop a roster of contractors qualified to perform various types of services from which the University may choose without the need to undertake one of the selection procedures set forth in this rule.

(7) The University may negotiate with a Single Seller or Sole Source if the services are available only from one contractor, or the prospective contractor has skills or experience not otherwise readily available and which are required for the performance of the services.

(8) **Emergency Appointment Procedure:** The University may select a contractor without following any of the procedures set forth in this rule when an unexpected, serious situation requires prompt action. In such an instance, the recommended appointment and a description of the conditions requiring the use of this appointment procedure shall be communicated to the Vice President for Finance and Administration or designee, who will determine if an emergency exists and, if so, the Vice President for Finance and Administration may declare an emergency and approve the appointment. The existence of an emergency and the appointment procedure must be documented in writing.

(9) **Alternative Processes.** Notwithstanding anything to the contrary in these rules, the University is authorized to develop and use alternative processes for contracting for Professional Services using evaluation criteria that may include, but are not limited to, cost, quality, service, compatibility,

operating efficiency, expansion potential, experience and reliability, commitment to support regional business development, and support for innovation.

(10) The Vice President for Finance and Administration or designee may grant an exemption from compliance with this rule for sufficient cause. Documentation of the decision to grant an exemption and the reason therefor must be maintained.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0201

Purpose; Delegation of Authority; Application

(1) The purpose of the rules set forth in OAR 571-040-0201 through 571-040-0390, is to:

(a) Establish procurement procedures that are simple and flexible;

(b) Reduce prior approvals and ensure accountability through auditing;

(c) Generate and retain only necessary documentation;

(d) Allow the University to work cooperatively with other Oregon University System (OUS) institutions and other governmental and non-profit entities; and

(e) Allow the University to do business more easily with local and regional vendors.

(2) These rules have been promulgated pursuant to authority delegated by the State Board of Higher Education (Board) under OAR chapter 580, division 40, and have been approved by the OUS Vice Chancellor for Finance and Administration. With respect to the University, these rules supersede the rules found in OAR 580-040-0200 through 580-040-0295, except that the following rules shall apply to the University: OAR 580-040-0290, 580-040-0292; and 580-040-0295.

(3) Except as expressly indicated, the rules set forth in OAR 571-040-0201 through 571-040-0390 apply only to the procurement (purchase) of goods and services.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0200, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0251

Processes for Procurement of Goods and Services Other than Professional Services

(1) The University has established several processes for the procurement of goods and services: formal; informal; direct negotiation; emergency; Sole Source; intergovernmental/non-profit; exemption; and alternative. In addition, the University has established several methods by which goods and services may be acquired: procurement cards; price agreements; retainer agreements; requirements contracts; purchase orders; custom contracts; and Qualified Contractor Lists. The University may use other methods in its sole discretion.

(2) For each purchase of goods and services, authorized personnel shall retain documentation, either hard copy or electronic, consistent with the requirements of OAR 571-040-0390. Such documentation shall be subject to audit.

(3) **Formal Procurement Process (more than \$200,000).** The formal procurement process shall be used, except as otherwise set forth herein, for all purchases of goods and services where the estimated cost exceeds \$200,000. The formal procurement process may be used for purchases where the estimated cost is \$200,000 or less upon the approval of the Vice President for Finance and Administration or designee.

(a) Multiple contracts, purchase orders, or purchasing requisitions shall not be issued separately with the intent to circumvent these rules.

(b) The formal process may be accomplished in either of two ways the University selects:

(A) **Invitation to bid.** The invitation to bid will be advertised as appropriate (which may be exclusively on the University's website), and, unless the invitation to bid provides otherwise, the contract will be awarded to the lowest responsive and responsible bidder.

(B) **Request for proposal.** The request for proposal will be advertised as appropriate, and the award process and criteria will be described in the request for proposal.

(c) The Vice President for Finance and Administration or designee may grant a release from the formal procurement process.

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(5) Informal Procurement Process, Including Direct Negotiation (\$50,000.01 to \$200,000)

(a) The informal procurement process may be used for all purchases of goods or services where the estimated cost exceeds \$50,000 but is not greater than \$200,000, or where the Vice President for Finance and Administration or designee has approved the use of the informal procurement process. The informal procurement process may include the solicitation of quotes or direct negotiation or a combination thereof. Multiple contracts, purchase orders, or purchasing requisitions shall not be issued separately with the intent to circumvent these rules.

(b) Solicitation of quotes will ordinarily be accomplished through the solicitation of quotes from three potential contractors. However, there may be circumstances where fewer than three are reasonably available. Solicitation may be accomplished by advertisement or by the initiation of a request to the relevant number of potential contractors, or both. When procuring goods or services through the solicitation process, information regarding persons or entities contacted, basis for selection, prices, and other information pertinent to the solicitation must be clearly documented.

(c) Direct negotiation. In lieu of or in addition to the solicitation of quotes, the Vice President for Finance and Administration or designee may authorize direct negotiation with a prospective contractor, as long as the Vice President for Finance and Administration or designee determines that direct negotiation will result in the best value under the circumstances.

(6) Purchases of \$50,000 or less. All purchases of goods or services where the estimated cost is \$50,000 or less may be accomplished through direct negotiation or such other process as will result in good value under the circumstances.

(7) Emergency Purchases. Emergency purchases may be made only pursuant to authorization issued by the Vice President for Finance and Administration or designee upon a finding that an Emergency exists. The amount of the purchase is not a relevant consideration in finding the existence of an Emergency. The procurement process to be used is at the discretion of authorized personnel but must be documented.

(8) Sole Source Purchases. When purchasing goods or services from a Sole Source, the University is not required to follow the competitive procedures set forth in these rules. Sole Source purchases must be approved by the Vice President for Finance and Administration or designee, in his or her sole discretion. Sufficient information shall be gathered to justify the determination that the good or service is reasonably available from only one contractor.

(9) Purchases From or Through Other Governmental or Non-profit Entities. Regardless of the dollar value of the purchase, the University and its departments may contract with, and purchase goods and services from or through, other governmental or non-profit entities such as state agencies, political subdivisions, federal agencies, or any other governmental or non-profit entity, without the use of competitive procedures.

(10) Requests for Information (RFI) and Requests for Qualifications (RFQ). The University may issue an RFI or an RFQ when the University determines, that such issuance is appropriate under the circumstances.

(11) Procurement Cards. Procurement cards, or other methods of direct purchasing, may be used as permitted by the Business Affairs Office.

(12) Qualified Contractor List. The University, through the Business Affairs Office, may negotiate directly with a contractor listed on a Qualified Contractor List if only one person or entity meets the University's needs and if the Solicitation Document or other document informed potential contractors that direct negotiation could occur.

(13) Qualification of Prospective Responders. The University may limit the persons or entities authorized to respond to a Solicitation Document by requiring that such persons or entities demonstrate to the University that the person or entity has:

(a) Financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, sufficient for the person or entity to meet all contractual responsibilities;

(b) A satisfactory record of performance on projects of similar size and scope; and

(c) A satisfactory record of integrity. When the University requires the qualification of prospective responders, it shall not consider a response from a Person or Entity that has not been qualified. If a Person or Entity fails to qualify the University shall notify the Person or Entity and specify the reasons under for such failure. The Person or Entity may protest the University's determination.

(14) Alternative Procurement Processes. Notwithstanding anything to the contrary in these rules, the University is authorized to develop and use alternative procurement processes using evaluation criteria that may include, but are not limited to, cost, quality, service, compatibility, product

reliability, operating efficiency, expansion potential, vendor experience and reliability, commitment to support regional business development, and support for innovation.

(15) Procurement Methods. At the University's discretion and subject to the University's direction, all procurement processes and purchases may be accomplished through the use of paper or electronic documents delivered by mail or courier; transmission via facsimile; transmission via electronic means; or a combination thereof.

(16) Bonds, Guaranties, and Security. The University may require payment or performance bonds or such other guaranties or security as the University deems appropriate, in its sole discretion, under the circumstances.

(17) Information Technology. In some cases, the acquisition of information technology and related services may require the prior approval of the Department of Administrative Services.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0250, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0261 Exemptions

(1) The University is exempt from compliance with OAR 571-040-0251 when seeking to acquire or pay for (as applicable) the following:

(a) Educational services.

(b) Brand name goods and services or product prequalification. The University may specify brand names in the procurement of goods and services if the particular good or service has attributes not found in other goods or services or under such other circumstances as the Business Affairs Office deems appropriate. In addition, when specific design or performance specifications must be met for a good or service to be purchased, the University may specify a list of qualified goods or services by reference to the qualified goods or services of a particular contractor or potential contractor.

(c) Advertising and media services.

(d) Price-regulated goods and services, where the rate or price for the goods or services being purchased is established by a federal, state, or local regulatory authority.

(e) Goods or services under federal contracts. When the price of goods or services has been established by a contract with an agency of the federal government pursuant to a federal contract award, the University may purchase the goods or services in accordance with the federal contract. In addition, the University may purchase specific equipment that is expressly required under the terms of the contract and that is only available from one source.

(f) Copyrighted materials. Copyrighted materials covered by this exemption may include, but are not limited to, textbooks, workbooks, curriculum kits, reference materials, software, periodicals, library books, library materials, and audio, visual, and electronic media.

(g) Investment contracts.

(h) Food and food-related services and products.

(i) Maintenance services directly from the contractor providing the goods.

(j) Used Personal Property.

(k) Goods purchased for resale.

(l) Goods or services related to intercollegiate athletic programs.

(m) Cadaveric organs.

(n) Goods and services related to conferences and workshops.

(o) Dues, registrations, and membership fees.

(p) Gasoline, diesel fuel, heating oil, lubricants, natural gas, electricity, asphalt, and similar commodities and products, and the transportation thereof.

(q) Supplies, maintenance, and services for ocean-going vessels when they are in other than home port.

(r) Repair and overhaul of goods or equipment.

(s) Goods or services purchased in foreign countries.

(2) Other exemptions may be granted by the Vice President for Finance and Administration or designee. Documentation of the decision to grant an exemption and the reason therefor must be maintained.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0260, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

ADMINISTRATIVE RULES

571-040-0380

Purchasing Policies Governing the Acquisition of Goods and Services from Qualified Rehabilitation Facilities

The University shall purchase goods and services from Qualified Rehabilitation Facilities in accordance with the statutes and regulations governing purchase from such QRFs.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0382

Affirmative Action; General Policy

The following Affirmative Action General Policy shall apply to University purchasing and contracting.

(1) The general policy of the University shall be to expand economic opportunities for Minority Business Enterprises, Women Business Enterprises, and Emerging Small Businesses by offering the contracting and subcontracting opportunities available through the University. Notice of all contract and bid request solicitations using the formal procurement process shall be provided to the Advocate for Minority, Women and Emerging Small Business and the Oregon Department of Administrative Services for the Oregon Opportunity Register and Clearinghouse when any other solicitation is sent.

(2) The University shall not knowingly contract with or procure goods or services from any organization, business entity, or individual that discriminates on the basis of age, disability, national origin, race, color, marital status, religion, sex, status as a veteran, sexual orientation, or transgendered status.

(3) Responders shall certify that they will not discriminate and have not discriminated against minority, women, or emerging small business enterprises in obtaining any required subcontracts.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0390

Recordkeeping Requirements

(1) Documentation of all purchasing and contracting transactions will be made available for inspection by the OUS Internal Audit Division upon request.

(2) Authorized personnel shall maintain documentation, whether written or electronic, regarding all purchasing and contracting transactions in accordance with the requirements of the Secretary of State and OUS.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0400

Applicability

OR 571-040-0410 through 571-040-0460 shall apply to all transactions covered under chapter 571, division 40.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0410

Responsibility; Responsibility Investigation

(1) A responsible Responder is a Person or Entity that has the ability in all respects to perform fully the contract, the integrity and reliability that will ensure good faith performance, and who has not been Disqualified by the State of Oregon, the State Board of Higher Education, OUS, or the University.

(2) The University may, prior to awarding any contract, make such investigation as is necessary to determine whether a Responder is responsible.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0350, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0420

Responsiveness; Acceptance and Rejection

(1) A responsive Response is one that complies in all material respects with a Solicitation Document and with all prescribed procedures and requirements. A nonresponsive Response is one that does not meet one or more material aspects of a Solicitation Document or that does not comply with one or more prescribed procedures or requirements. The University may waive one or more defects in a Response that provide no material advantage to the Responder or are otherwise immaterial.

(2) Except as set forth in the Solicitation Document or these rules, the University will accept and consider only those Responses that are responsive or Responses with one or more defects that have been waived. Otherwise, nonresponsive Responses will be rejected.

(3) Nothing in this rule limits the ability of the University to monitor contractor performance.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0352, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0430

Rejection of Individual Responses

(1) The University may reject any Response that fails to meet all prescribed procedures or requirements and may reject any Response upon a written finding that it is in the best interest of the University to do so.

(2) Reasons for rejecting a Response include, but are not limited to, finding that:

(a) The Responder has not been qualified as required in a Solicitation Document or these rules, or is disqualified under ORS 200.075, 279A.110, other similar statute, or these rules; or

(b) The Responder, or an entity in which the Responder has a financial interest, has been declared ineligible by the Commissioner of the Bureau of Labor and Industries for failure or refusal to pay or post prevailing wage rates; or

(c) The Response is not responsive; or

(d) The goods or services offered in the Response are unacceptable by reason of their material failure to meet the requirements of the Solicitation Document; or

(e) The Responder is not responsible, i.e., is not likely to be capable of satisfying the terms and conditions of the contract in a timely manner due to financial incapacity, inability to obtain bonding, loss of license, poor performance history, lack of necessary equipment, lack of personnel of sufficient experience, or other objective cause; or

(f) The Responder within the last five years has been found in a civil, criminal, or administrative proceeding to have committed or engaged in fraud, misrepresentation, price-rigging, unlawful anti-competitive conduct, or similar behavior; or

(g) The Responder has been determined to be responsible (i.e., adjudicated by a court, or as determined in writing by the State of Oregon, the Board of Higher Education, OUS or the University in the case of a public contract) for more than one breach of a public or private contract or contracts in the last three calendar years before the scheduled date of the closing; or

(h) The bond, guaranty, or other required security has not been submitted or properly executed as required by the Solicitation Document; or

(i) The Responder has not met the emerging small business, disadvantaged business, minority business, and women business enterprise requirements, if any, established by the State of Oregon, the Board of Higher Education, OUS or the University, and has not made a good faith effort in accordance with applicable law to comply with the requirements prior to closing; or

(j) The Responder has failed to provide the certification required by OR 571-040-0382; or

(k) Other circumstances of the particular Response or Responder indicate that acceptance of the Response would impair the integrity of the selection process or result in an imprudent contract.

(3) For purposes of this rule, the business registry of bidders or proposers shall be subject to scrutiny, i.e., confirmation of ownership or identification of officers and directors, in order to identify previously disqualified bidders or proposers, and thus prevent any subterfuge, change of apparent ownership, or other adjustments in formal appearance, to avoid application of this rule or of the disqualification provisions of relevant statutes or rules.

(4) All Responders whose Response is rejected shall be notified in writing by certified mail of the rejection and the reason therefor.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0360, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0440 Disqualification

(1) As used in this rule:
(a) "Disqualification" means the debarment, exclusion, or suspension of a Person or Entity from the right to submit a Response to a Solicitation Document for a reasonable, specified period of time named in the order of disqualification. A Person or Entity so debarred, excluded, or suspended is disqualified.

(b) Disqualification attaches to and follows the Person, so that a Person who, for example, is a partner in a partnership or an officer or principal in a corporation that is disqualified may not reform the business entity as a way of avoiding the disqualification.

(2) A Responder may be disqualified if the Responder is found to have materially breached a contractual obligation to the State of Oregon, the Board of Higher Education, OUS, the University, or a Person or Entity.

(3) A Responder may be disqualified for the reasons set forth in ORS 200.075 and similar statutes and rules.

(4) The University may make such investigation as is necessary to determine whether there are grounds for disqualification. Failure to supply such information promptly as requested by the University is itself grounds for a disqualification.

(5) Notice of contemplated disqualification will be provided in writing by personal service or certified mail. The disqualified Entity or Person shall then be provided with an opportunity to be heard before the Institution President or designee. A Final Agency Order shall thereafter be issued and shall contain the effective date of the disqualification and the effective period of disqualification; the grounds for disqualification; and a statement of the appeal rights and applicable appeal deadlines.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0370, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0450 Protests

- (1) The following matters may be protested:
- (a) A determination of responsibility or lack thereof;
 - (b) A determination of responsiveness or lack thereof;
 - (c) The rejection of a Response;
 - (d) The content of a Solicitation Document;
 - (e) The denial of qualification;

(f) The selection of one or more contractors. A protest may be submitted only by a Person or Entity that can demonstrate that it has been or is being adversely affected by a University decision or the content of a Solicitation Document.

(2) Except for 1(d) above, a protest must be submitted in writing to the Director of Business Affairs or designee no later than ten (10) calendar days after the mailing date of the decision. For 1(d) above, a protest must be submitted to the Director of Business Affairs or designee no later than ten (10) calendar days prior to closing. These time periods may be varied in a Solicitation Document or for sufficient cause as determined in the sole discretion of the Director of Business Affairs or designee.

(3) A protest must fully set forth all grounds for the protest and include all evidence that the protestor wishes the Director of Business Affairs or designee to consider. Failure to include any ground for the protest or any evidence in support of it shall constitute a final, knowing and voluntary waiver of the right to assert such ground or evidence. A protest must include in a conspicuous location a marking identifying the type and nature of the protest. The Solicitation Document number must also be included in a conspicuous location.

(4) A protest of a Solicitation Document may be made only if a term or condition of the Solicitation Document, including but not limited to specifications or contract terms, violates applicable law. The University will (upon altering the Solicitation Document in response to a protest) promptly transmit the revised Solicitation Document to all Responders and extend the closing where appropriate. The University may choose, in its sole discretion, to close the procurement process without making an award and begin a new procurement process.

(5) A protest of the denial of qualification must demonstrate that the University's decision was materially in error or that the University committed a material procedural error and that any such error, alone or in combination with other errors, was a "but for" cause of the denial.

(6) A protest of the selection of one or more contractors requires the Responder to demonstrate, as applicable:

(a) That all higher-ranked Responders were ineligible for selection or that the Responder would have been "next in line" to receive the award and was eligible for selection; and

(b) That the Responder selected was ineligible.

(7) A protest of the rejection of a Response must demonstrate that the University's decision was materially in error or that the University committed a material procedural error and that any such error, alone or in combination with other errors, was a "but for" cause of the rejection.

(8) The Director of Business Affairs or designee shall review protests under sections (4) through (7) above and shall have the authority to make the final determination. The Director of Business Affairs or designee shall also have the authority to settle or resolve a protest. In making a final determination or settling or resolving a protest, the Director or designee shall issue a written Final Agency Order. Contract award may be made prior to issuance of the Final Agency Order if authorized by the Director or designee. Judicial review of the disposition of a written protest submitted in accordance with this rule may be available pursuant to the provisions of ORS 183.480 et seq.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0271, 571-040-0361 571-040-0371, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

571-040-0460 Clarification of Solicitation Documents and Requests for Change

A prospective Responder may submit in writing to the Director of Business Affairs, designee, or other Person identified in a Solicitation Document a request for clarification or change of any Solicitation Document. A request for change must include the specific change sought by the prospective Responder. A request under this rule must be submitted within ten (10) calendar days after the Solicitation Document is issued. This time period may be varied in a Solicitation Document or for sufficient cause as determined in the sole discretion of the Director of Business Affairs or designee.

Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: UOO 4-1996, f. & cert. ef. 7-23-96; Renumbered from 571-040-0263, UO 1-2006, f. 8-15-06, cert. ef. 9-1-06; UO 1-2007(Temp), f. 2-13-07, cert. ef. 2-14-07 thru 8-1-07; UO 15-2007, f. 7-26-07, cert. ef. 8-1-07; Suspended by UO 1-2008(Temp), f. & cert. ef. 2-19-08 thru 8-16-08

Physical Therapist Licensing Board Chapter 848

Rule Caption: Amend CE rule to exempt newly licensed therapist from CE requirement to renew current license.

Adm. Order No.: PTLB 1-2008(Temp)

Filed with Sec. of State: 2-19-2008

Certified to be Effective: 2-19-08 thru 4-2-08

Notice Publication Date:

Rules Amended: 848-035-0020

Subject: This Temporary Rule will affect physical therapists and physical therapist assistants whose initial licensure date with the Oregon Board falls between January 2, 2008 and March 31, 2008. Therapists licensed during this timeframe will be exempt from the requirement to complete CE to renew their 2008–2009 Oregon license.

Rules Coordinator: James Heider—(971) 673-0203

848-035-0020

Required Hours and Period for Completion

(1) A licensed physical therapist is required within each certification period to complete 24 hours of continuing education relating to the delivery or provision of physical therapy services.

(2) A licensed physical therapist assistant is required within each certification period to complete 12 hours of continuing education relating to the delivery or provision of physical therapy services.

(3) Notwithstanding the provisions of subsection (1) of this rule, any person who is first issued an Oregon physical therapist license through

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examination pursuant to OAR 848-010-0015, or through endorsement pursuant to 848-010-0020, anytime during the first year of a certification period (April 1st of an even numbered year through March 31st of an odd numbered year), must complete the full 24 hours of continuing education required for that certification period. A person who is first issued an Oregon physical therapist license anytime during the second year of a certification period (April 1st of an odd numbered year through March 31st of an even numbered year), must complete one-half (12 hours) of the continuing education required for that certification period. Thereafter, such licensees must complete the same continuing education requirements as other licensees who hold the same license.

(4) Notwithstanding the provisions of subsection (2) of this rule, any person who is first issued an Oregon physical therapist assistant license through examination pursuant to OAR 848-010-0015, or through endorsement pursuant to 848-010-0020, anytime during the first year of a certification period (April 1st of an even numbered year through March 31st of an odd numbered year), must complete the full 12 hours of continuing education required for that certification period. A person who is first issued an Oregon physical therapist assistant license anytime during the second year of a certification period (April 1st of an odd numbered year through March 31st of an even numbered year), must complete one-half (6 hours) of the continuing education required for that certification period. Thereafter, such licensees must complete the same continuing education requirements as other licensees who hold the same license.

(5) Notwithstanding the provisions of subsection (1) of this rule, a physical therapist whose Oregon license has lapsed pursuant to OAR 848-010-0033(1), and who subsequently renews the lapsed license pursuant to 848-010-0035, anytime during the first year of a new certification period (April 1st of an even numbered year through March 31st of an odd numbered year), must complete the full 24 hours of continuing education required for that certification period. A person whose lapsed physical therapist license is renewed anytime during the second year of a certification period (April 1st of an odd numbered year through March 31st of an even numbered year), must complete one-half (12 hours) of the continuing education required for that certification period. However, if a person who is renewing a lapsed license practiced in Oregon at any time while the person's license was lapsed, the person must complete the full 24 hours of continuing education required for the certification period. Thereafter, such licensees must complete the same continuing education requirements as other licensees who hold the same license.

(6) Notwithstanding the provisions of subsection (2) of this rule, a physical therapist assistant whose Oregon license has lapsed pursuant to OAR 848-010-0033(1), and who subsequently renews the lapsed license pursuant to 848-010-0035, anytime during the first year of a new certification period (April 1st of an even numbered year through March 31st of an odd numbered year), must complete the full 12 hours of continuing education required for that certification period. A person whose lapsed physical therapist assistant license is renewed anytime during the second year of a certification period (April 1st of an odd numbered year through March 31st of an even numbered year), must complete one-half (6 hours) of the continuing education required for that certification period. However, if a person who is renewing a lapsed license practiced in Oregon at any time while the person's license was lapsed, the person must complete the full 12 hours of continuing education required for the certification period. Thereafter, such licensees must complete the same continuing education requirements as other licensees who hold the same license.

(7) Any licensee whose license lapses on April 1st of an even numbered year, regardless of the reason, and who subsequently renews the lapsed license during the first 12 months of a new certification period, shall provide documentation of completion of the continuing education requirements for the immediately prior certification period before the license will be renewed.

(8) For purposes of determining whether a licensee has satisfied the continuing education requirement under section (3), (4), (5) or (6) of this rule, the Licensing Board will accept all qualifying continuing education hours completed from the beginning date of the 24 month certification period in which the license was issued or renewed, regardless of the specific date the license was issued or renewed. For example, a person whose license is issued or renewed on June 15, 2009 will receive credit for all qualifying continuing education hours completed at any time during the certification period of April 1, 2008 to March 31, 2010.

(9) The initial certification period for a licensee to complete the required hours shall be January 1, 2006, through and including March 31, 2008. Thereafter, each twenty-four month period for completion of the required hours shall be April 1st of the even numbered year through March

31st of the next even numbered year. For example, the second twenty-four month period will be from April 1, 2008, through March 31, 2010.

(10) Failure to complete the required continuing education by March 31st of an even-numbered year shall constitute a violation of this division 35.

(11) Notwithstanding the provisions of this rule and OAR 848-010-0033(6), a physical therapist or physical therapist assistant who is renewing a license for 2008-2009 and who was first licensed in Oregon between January 1, 2008, to and including March 31, 2008, is not required to complete continuing education for the current certification period of January 1, 2006 to March 31, 2008. Thereafter such licensees shall be subject to the continuing education requirement for the certification period beginning April 1, 2008 through March 31, 2010.

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160(6)(g)

Hist.: PTLB 1-2006, f. & cert. ef. 4-14-06; PTLB 1-2008(Temp), f. & cert. ef. 2-19-08 thru 4-2-08

Public Utility Commission Chapter 860

Rule Caption: In the Matter of Amendments to OAR 860-012-0100 Regarding Case Certification for Grant Eligibility.

Adm. Order No.: PUC 1-2008

Filed with Sec. of State: 3-11-2008

Certified to be Effective: 3-11-08

Notice Publication Date: 2-1-2008

Rules Amended: 860-012-0100

Subject: The amendments to OAR 860-012-0100 clarify the requirements of an organization for case certification for eligibility for inter-venor funding. These amendments conform the rule to the language included in the First Amended and Restated Intervenor Funding Agreement as approved by the Commission in its Order No. 07-564 on December 19, 2007, and effective January 1, 2008.

Rules Coordinator: Diane Davis—(503) 378-4372

860-012-0100

Grant Eligibility (Precertification and Case-Certification)

(1) Definitions:

(a) "Agreement" means a Commission approved agreement under ORS Ch. 234, OR Laws 2003 between a utility providing electricity or natural gas and a not-for-profit organization that represents broad customer interests in Commission regulatory proceedings.

(b) "Grant" means financial assistance to an intervenor under the terms of an agreement.

(2) General. Upon Commission approval of an agreement, the Commission shall apply the qualifications set forth in this rule to determine eligibility for a grant. Only parties that are precertified, or parties that become case-certified for a particular proceeding, will be eligible to receive grants under an agreement. The terms of an agreement will be binding on all organizations seeking a grant under that agreement and will be followed by the Commission in administering the agreement.

(3) Precertification. The Commission will precertify organizations meeting the criteria of subsection (3)(a) or (3)(b) as eligible to receive grants. Once precertified, an organization will remain precertified unless the Commission decertifies the organization under OAR 860-012-0190.

(a) The Citizens' Utility Board of Oregon (CUB), as a representative of residential customers; or

(b) Not-for-profit organizations that meet all of the following criteria:

(A) A primary purpose of the organization is to represent utility customers' interests on an ongoing basis;

(B) The organization represents the interests of a broad group or class of customers and those interests are primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers, and not narrow interests or issues that are ancillary to the representation of the interests of customers as consumers of utility services;

(C) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;

(D) The organization's members, who are customers of one or more of the utilities that are parties to the agreement, contribute a significant portion of the overall support and funding of the organization's activities in the state; and

(E) The organization has demonstrated in past Commission matters the ability to substantively contribute to the record on behalf of customer interests.

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(4) Case-Certification. Organizations meeting the following criteria may be case-certified by the Commission to be eligible to receive a grant:

(a) The organization:

(A) Is a not-for-profit organization; or

(B) Demonstrates that it is in the process of becoming a nonprofit corporation; or

(C) Is comprised of multiple customers of one or more of the utilities that are parties to the agreement and demonstrates that a primary purpose of the organization is to represent broad utility customer interests.

(b) The organization represents the interests of a broad group or class of customers and its participation in the proceeding will be primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers, and not narrow interests or issues that are ancillary to the impact of the rates and terms and conditions of service to the customer group;

(c) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent;

(d) The organization's members who are customers of one or more of the utilities affected by the proceeding that are parties to the agreement contribute a significant percentage of the overall support and funding of the organization;

(e) The organization demonstrates, or has demonstrated in past Commission proceedings, the ability to substantively contribute to the record on behalf of customer interests related to rates and the terms and conditions of service, including in any proceeding in which the organization was case-certified and received a grant;

(f) The organization demonstrates that:

(A) No precertified intervenor participating in the proceeding adequately represents the specific interests of the class of customers represented by the organization related to rates and terms and conditions of service; or

(B) The specific interests of a class of customers will benefit from the organization's participation; and

(g) The organization demonstrates that its request for case-certification will not unduly delay the schedule of the proceeding.

Stat. Auth.: ORS 756.040 & 757.072

Stats. Implemented: ORS 757.072

Hist.: PUC 1-2004, f. & cert. ef. 1-8-04; PUC 1-2008, f. & cert. ef. 3-11-08

Secretary of State,
Elections Division
Chapter 165

Rule Caption: Adopts Deadlines for Pine Eagle Health District Measure Election Notice and Candidate Filings.

Adm. Order No.: ELECT 2-2008(Temp)

Filed with Sec. of State: 2-21-2008

Certified to be Effective: 2-21-08 thru 3-15-08

Notice Publication Date:

Rules Adopted: 165-020-2021

Subject: The Baker County Board of Commissioners signed an order for the formation of the Pine Eagle Health District, a special district located entirely in Baker County. The district formation, with a permanent tax rate, and election of the first board of directors has been referred to the May 20, 2008, Primary Election. The rule provides extended deadlines for the county to provide a public notice of district election and accept candidate filings.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-020-2021

Extended Deadlines for Pine Eagle Health District

On February 20, 2008 the Baker County Board of Commissioners signed an order to create the Pine Eagle Health District. The order called for an election to be held on May 20, 2008 with a permanent tax rate and election of the first board of directors. The following deadlines apply:

(1) February 21, 2008, last date for clerk to publish notice of district election in newspaper of general circulation in the district.

(2) March 14, 2008, last date for candidates to file declaration of candidacy or completed nominating petition with the Baker County Clerk.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 198.810, 198.815 & 255.075

Hist.: ELECT 2-2008(Temp), f. & cert. ef. 2-21-08 thru 3-15-08

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

Adm. Order No.: ELECT 3-2008(Temp)

Filed with Sec. of State: 3-14-2008

Certified to be Effective: 3-14-08 thru 5-2-08

Notice Publication Date:

Rules Amended: 165-014-0100

Subject: Each chief petitioner of an initiative or referendum petition who pays any person or other valuable consideration to obtain signatures on the petition shall keep detailed accounts in accordance with ORS 260.262. This rule is proposed for amendment to require chief petitioners who submit copies of signature sheets in accordance with ORS 260.262(1) to directly associate those sheets with the payroll records for the individuals who were paid to gather them.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-014-0100

Review of specified chief petitioner accounts

(1) Each chief petitioner of an initiative or referendum petition who pays any person money or other valuable consideration to obtain signatures on the petition shall keep detailed accounts in accordance with ORS 260.262. The Elections Division will review these accounts in the manner and in accordance with the schedule set out in paragraphs (2) and (3) of this rule.

(2) Not later than six months after approval to circulate the Elections Division will notify each chief petitioner by certified mail of the deadline to submit copies of their accounts.

(a) The Elections Division may request original documentation of chief petitioner accounts, in addition to or in lieu of copies.

(b) The Elections Division may choose to conduct on-site reviews of chief petitioner accounts.

(3) When a chief petitioner has been notified of the requirement to provide detailed copies of their accounts, they shall have 10 days from the delivery date indicated on the certified letter's postal confirmation. If the certified letter is refused or left unclaimed at the post office, the time shall be calculated from the date the post office indicates it has given first notice of a certified letter.

(a) If original signature sheets are submitted for verification prior to accounts being requested, chief petitioners are required to retain copies of the signature sheets in order to comply with ORS 260.262(1)(e).

(b) Copies of signature sheets provided under ORS 260.262(1)(e) must be submitted together with the payroll records of the circulator who was paid to gather the signatures on those signature sheets, in a manner that separates these associated records from all other records submitted with the accounts. This can be accomplished by paper clip, binder clip, separate folder, or any other manner (other than stapling) that joins the signature sheets and associated payroll records, separate from the rest of the accounts. For example, if circulator John Doe is paid \$430, the chief petitioner must submit, in a separate, distinct grouping, payroll records for that payment and a copy of any signature sheet associated with that payment. This requirement is effective for any signature sheet gathered, in whole or in part, after the effective date of this rule.

(4) If the petition has multiple chief petitioners, only one set of copies of the detailed accounts for each petition need to be produced by the deadline.

(5) Accounts must be kept current as of not later than the 7th calendar day after the date a payment is made to a person for obtaining signatures on a petition.

(6) The Elections Division reserves the right to conduct a review of chief petitioner accounts in accordance with ORS 260.262(4).

Stat. Auth.: ORS 246.150, 260.262

Stats. Implemented: ORS 260.262

Hist.: ELECT 21-2007, f. & cert. ef. 12-31-07; ELECT 3-2008(Temp), f. & cert. ef. 3-14-08 thru 5-2-08

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123-011-0030	3-4-2008	Amend(T)	4-1-2008	123-057-0350	3-4-2008	Amend(T)	4-1-2008
123-011-0035	3-4-2008	Amend(T)	4-1-2008	123-057-0410	3-4-2008	Amend(T)	4-1-2008
123-011-0037	3-4-2008	Adopt(T)	4-1-2008	123-057-0430	3-4-2008	Amend(T)	4-1-2008

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123-057-0470	3-4-2008	Amend(T)	4-1-2008	137-047-0263	1-1-2008	Amend	2-1-2008
123-057-0510	3-4-2008	Amend(T)	4-1-2008	137-047-0275	1-1-2008	Amend	2-1-2008
123-057-0530	3-4-2008	Amend(T)	4-1-2008	137-047-0280	1-1-2008	Amend	2-1-2008
123-057-0710	3-4-2008	Amend(T)	4-1-2008	137-047-0285	1-1-2008	Amend	2-1-2008
125-050-0200	2-29-2008	Adopt	4-1-2008	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
125-145-0010	2-6-2008	Repeal	3-1-2008	137-047-0400	1-1-2008	Amend	2-1-2008
125-145-0020	12-6-2007	Suspend	1-1-2008	137-047-0410	1-1-2008	Amend	2-1-2008
125-145-0020	2-6-2008	Repeal	3-1-2008	137-047-0430	1-1-2008	Amend	2-1-2008
125-145-0030	12-6-2007	Suspend	1-1-2008	137-047-0575	1-1-2008	Amend	2-1-2008
125-145-0030	2-6-2008	Repeal	3-1-2008	137-047-0610	1-1-2008	Amend	2-1-2008
125-145-0040	12-6-2007	Suspend	1-1-2008	137-047-0730	1-1-2008	Amend	2-1-2008
125-145-0040	2-6-2008	Repeal	3-1-2008	137-048-0100	1-1-2008	Amend	2-1-2008
125-145-0045	12-6-2007	Suspend	1-1-2008	137-048-0130	1-1-2008	Amend	2-1-2008
125-145-0045	2-6-2008	Repeal	3-1-2008	137-048-0200	1-1-2008	Amend	2-1-2008
125-145-0060	12-6-2007	Suspend	1-1-2008	137-048-0210	1-1-2008	Amend	2-1-2008
125-145-0060	2-6-2008	Repeal	3-1-2008	137-048-0220	1-1-2008	Amend	2-1-2008
125-145-0080	12-6-2007	Suspend	1-1-2008	137-048-0240	1-1-2008	Amend	2-1-2008
125-145-0080	2-6-2008	Repeal	3-1-2008	137-048-0250	1-1-2008	Amend	2-1-2008
125-145-0090	12-6-2007	Suspend	1-1-2008	137-048-0300	1-1-2008	Amend	2-1-2008
125-145-0090	2-6-2008	Repeal	3-1-2008	137-048-0320	1-1-2008	Amend	2-1-2008
125-145-0100	12-6-2007	Suspend	1-1-2008	137-049-0100	1-1-2008	Amend	2-1-2008
125-145-0100	2-6-2008	Repeal	3-1-2008	137-049-0140	1-1-2008	Amend	2-1-2008
125-145-0105	12-6-2007	Suspend	1-1-2008	137-049-0150	1-1-2008	Amend	2-1-2008
125-145-0105	2-6-2008	Repeal	3-1-2008	137-049-0160	1-1-2008	Amend	2-1-2008
125-246-0700	2-29-2008	Am. & Ren.	4-1-2008	137-049-0200	1-1-2008	Amend	2-1-2008
125-246-0710	2-29-2008	Am. & Ren.	4-1-2008	137-049-0210	1-1-2008	Amend	2-1-2008
125-246-0720	2-29-2008	Am. & Ren.	4-1-2008	137-049-0280	1-1-2008	Amend	2-1-2008
125-246-0730	2-29-2008	Am. & Ren.	4-1-2008	137-049-0290	1-1-2008	Amend	2-1-2008
137-009-0130	2-1-2008	Amend	3-1-2008	137-049-0310	1-1-2008	Amend	2-1-2008
137-009-0140	2-1-2008	Amend	3-1-2008	137-049-0390	1-1-2008	Amend	2-1-2008
137-009-0145	2-1-2008	Amend	3-1-2008	137-049-0395	1-1-2008	Amend	2-1-2008
137-009-0147	2-1-2008	Adopt	3-1-2008	137-049-0630	1-1-2008	Amend	2-1-2008
137-009-0150	2-1-2008	Amend	3-1-2008	137-049-0645	1-1-2008	Amend	2-1-2008
137-009-0155	2-1-2008	Amend	3-1-2008	137-049-0860	1-1-2008	Amend	2-1-2008
137-020-0015	1-2-2008	Amend	2-1-2008	137-055-3020	1-2-2008	Amend(T)	2-1-2008
137-020-0020	1-2-2008	Amend	2-1-2008	137-055-3060	1-2-2008	Amend(T)	2-1-2008
137-020-0040	1-2-2008	Amend	2-1-2008	137-055-3080	1-2-2008	Amend(T)	2-1-2008
137-020-0050	1-2-2008	Amend	2-1-2008	137-055-3100	1-2-2008	Amend(T)	2-1-2008
137-045-0010	1-1-2008	Amend	2-1-2008	137-055-3140	1-2-2008	Amend(T)	2-1-2008
137-045-0015	1-1-2008	Amend	2-1-2008	137-055-4620	1-2-2008	Amend	2-1-2008
137-045-0020	1-1-2008	Amend	2-1-2008	137-060-0100	1-18-2008	Amend	3-1-2008
137-045-0030	1-1-2008	Amend	2-1-2008	137-060-0110	1-18-2008	Amend	3-1-2008
137-045-0035	1-1-2008	Amend	2-1-2008	137-060-0130	1-18-2008	Amend	3-1-2008
137-045-0050	1-1-2008	Amend	2-1-2008	137-060-0140	1-18-2008	Amend	3-1-2008
137-045-0055	1-1-2008	Amend	2-1-2008	137-060-0150	1-18-2008	Amend	3-1-2008
137-045-0060	1-1-2008	Amend	2-1-2008	137-060-0160	1-18-2008	Amend	3-1-2008
137-045-0070	1-1-2008	Amend	2-1-2008	137-060-0200	1-18-2008	Amend	3-1-2008
137-045-0090	1-1-2008	Amend	2-1-2008	137-060-0210	1-18-2008	Amend	3-1-2008
137-046-0100	1-1-2008	Amend	2-1-2008	137-060-0230	1-18-2008	Amend	3-1-2008
137-046-0110	1-1-2008	Amend	2-1-2008	137-060-0240	1-18-2008	Amend	3-1-2008
137-046-0130	1-1-2008	Amend	2-1-2008	137-060-0250	1-18-2008	Amend	3-1-2008
137-047-0000	1-1-2008	Amend	2-1-2008	137-060-0260	1-18-2008	Amend	3-1-2008
137-047-0100	1-1-2008	Amend	2-1-2008	137-060-0300	1-18-2008	Amend	3-1-2008
137-047-0257	1-1-2008	Amend	2-1-2008	137-060-0310	1-18-2008	Amend	3-1-2008

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137-060-0340	1-18-2008	Amend	3-1-2008	141-089-0110	1-1-2008	Amend	1-1-2008
137-060-0350	1-18-2008	Amend	3-1-2008	141-089-0115	1-1-2008	Amend	1-1-2008
137-060-0360	1-18-2008	Amend	3-1-2008	141-089-0120	1-1-2008	Amend	1-1-2008
137-060-0400	1-18-2008	Amend	3-1-2008	141-089-0135	1-1-2008	Amend	1-1-2008
137-060-0410	1-18-2008	Amend	3-1-2008	141-089-0140	1-1-2008	Amend	1-1-2008
137-060-0430	1-18-2008	Amend	3-1-2008	141-089-0150	1-1-2008	Amend	1-1-2008
137-060-0440	1-18-2008	Amend	3-1-2008	141-089-0155	1-1-2008	Amend	1-1-2008
137-060-0450	1-18-2008	Amend	3-1-2008	141-089-0157	1-1-2008	Adopt	1-1-2008
137-084-0001	12-11-2007	Amend	1-1-2008	141-089-0170	1-1-2008	Amend	1-1-2008
137-084-0005	12-11-2007	Amend	1-1-2008	141-089-0175	1-1-2008	Amend	1-1-2008
137-084-0010	12-11-2007	Amend	1-1-2008	141-089-0180	1-1-2008	Amend	1-1-2008
137-084-0020	12-11-2007	Amend	1-1-2008	141-089-0185	1-1-2008	Amend	1-1-2008
137-084-0500	12-11-2007	Amend	1-1-2008	141-089-0190	1-1-2008	Amend	1-1-2008
141-085-0005	1-1-2008	Amend	1-1-2008	141-089-0192	1-1-2008	Adopt	1-1-2008
141-085-0006	1-1-2008	Amend	1-1-2008	141-089-0205	1-1-2008	Amend	1-1-2008
141-085-0010	1-1-2008	Amend	1-1-2008	141-089-0215	1-1-2008	Amend	1-1-2008
141-085-0015	1-1-2008	Amend	1-1-2008	141-089-0225	1-1-2008	Amend	1-1-2008
141-085-0018	1-1-2008	Amend	1-1-2008	141-089-0230	1-1-2008	Amend	1-1-2008
141-085-0020	1-1-2008	Amend	1-1-2008	141-089-0245	1-1-2008	Amend	1-1-2008
141-085-0021	1-1-2008	Repeal	1-1-2008	141-089-0260	1-1-2008	Amend	1-1-2008
141-085-0022	1-1-2008	Amend	1-1-2008	141-089-0265	1-1-2008	Amend	1-1-2008
141-085-0023	1-1-2008	Amend	1-1-2008	141-089-0280	1-1-2008	Amend	1-1-2008
141-085-0025	1-1-2008	Amend	1-1-2008	141-089-0285	1-1-2008	Amend	1-1-2008
141-085-0028	1-1-2008	Amend	1-1-2008	141-089-0290	1-1-2008	Amend	1-1-2008
141-085-0029	1-1-2008	Amend	1-1-2008	141-089-0295	1-1-2008	Amend	1-1-2008
141-085-0034	1-1-2008	Amend	1-1-2008	141-089-0300	1-1-2008	Amend	1-1-2008
141-085-0036	1-1-2008	Amend	1-1-2008	141-089-0302	1-1-2008	Adopt	1-1-2008
141-085-0064	1-1-2008	Amend	1-1-2008	141-089-0400	1-1-2008	Amend	1-1-2008
141-085-0066	1-1-2008	Amend	1-1-2008	141-089-0405	1-1-2008	Amend	1-1-2008
141-085-0068	1-1-2008	Adopt	1-1-2008	141-089-0415	1-1-2008	Amend	1-1-2008
141-085-0070	1-1-2008	Amend	1-1-2008	141-089-0420	1-1-2008	Amend	1-1-2008
141-085-0075	1-1-2008	Amend	1-1-2008	141-089-0423	1-1-2008	Adopt	1-1-2008
141-085-0079	1-1-2008	Amend	1-1-2008	141-089-0500	1-1-2008	Amend	1-1-2008
141-085-0085	1-1-2008	Amend	1-1-2008	141-089-0505	1-1-2008	Amend	1-1-2008
141-085-0090	1-1-2008	Amend	1-1-2008	141-089-0515	1-1-2008	Amend	1-1-2008
141-085-0095	1-1-2008	Amend	1-1-2008	141-089-0520	1-1-2008	Amend	1-1-2008
141-085-0096	1-1-2008	Amend	1-1-2008	141-089-0550	1-1-2008	Amend	1-1-2008
141-085-0115	1-1-2008	Amend	1-1-2008	141-089-0555	1-1-2008	Amend	1-1-2008
141-085-0121	1-1-2008	Amend	1-1-2008	141-089-0560	1-1-2008	Amend	1-1-2008
141-085-0126	1-1-2008	Amend	1-1-2008	141-089-0565	1-1-2008	Amend	1-1-2008
141-085-0131	1-1-2008	Amend	1-1-2008	141-089-0570	1-1-2008	Amend	1-1-2008
141-085-0136	1-1-2008	Amend	1-1-2008	141-089-0572	1-1-2008	Adopt	1-1-2008
141-085-0141	1-1-2008	Amend	1-1-2008	141-089-0585	1-1-2008	Amend	1-1-2008
141-085-0146	1-1-2008	Amend	1-1-2008	141-089-0595	1-1-2008	Amend	1-1-2008
141-085-0156	1-1-2008	Amend	1-1-2008	141-089-0600	1-1-2008	Amend	1-1-2008
141-085-0161	1-1-2008	Amend	1-1-2008	141-089-0605	1-1-2008	Amend	1-1-2008
141-085-0166	1-1-2008	Amend	1-1-2008	141-089-0607	1-1-2008	Adopt	1-1-2008
141-085-0171	1-1-2008	Amend	1-1-2008	141-090-0005	1-1-2008	Amend	1-1-2008
141-085-0176	1-1-2008	Amend	1-1-2008	141-090-0010	1-1-2008	Amend	1-1-2008
141-085-0256	1-1-2008	Amend	1-1-2008	141-090-0015	1-1-2008	Amend	1-1-2008
141-085-0257	1-1-2008	Amend	1-1-2008	141-090-0020	1-1-2008	Amend	1-1-2008
141-085-0421	1-1-2008	Amend	1-1-2008	141-090-0025	1-1-2008	Amend	1-1-2008
141-085-0425	1-1-2008	Amend	1-1-2008	141-090-0030	1-1-2008	Amend	1-1-2008
141-085-0430	1-1-2008	Amend	1-1-2008	141-090-0032	1-1-2008	Adopt	1-1-2008
141-089-0100	1-1-2008	Amend	1-1-2008	141-090-0035	1-1-2008	Amend	1-1-2008

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141-090-0045	1-1-2008	Amend	1-1-2008	160-050-0210	1-15-2008	Amend	2-1-2008
141-090-0050	1-1-2008	Amend	1-1-2008	160-050-0215	1-15-2008	Adopt	2-1-2008
141-090-0055	1-1-2008	Amend	1-1-2008	160-050-0220	1-15-2008	Amend	2-1-2008
141-102-0000	1-1-2008	Amend	1-1-2008	160-050-0230	1-15-2008	Amend	2-1-2008
141-102-0020	1-1-2008	Amend	1-1-2008	160-050-0240	1-15-2008	Amend	2-1-2008
141-102-0030	1-1-2008	Amend	1-1-2008	160-050-0250	1-15-2008	Amend	2-1-2008
141-102-0045	1-1-2008	Repeal	1-1-2008	160-050-0280	1-15-2008	Amend	2-1-2008
150-118.005	1-1-2008	Repeal	2-1-2008	160-100-0200	1-15-2008	Amend	1-1-2008
150-18.385-(A)	1-1-2008	Amend	2-1-2008	165-002-0020	12-31-2007	Amend	2-1-2008
150-293.250(2)	2-15-2008	Amend	3-1-2008	165-004-0005	12-31-2007	Amend	2-1-2008
150-305.145(3)	1-1-2008	Amend	2-1-2008	165-004-0020	12-31-2007	Amend	2-1-2008
150-305.220(2)	1-1-2008	Amend	2-1-2008	165-005-0130	12-31-2007	Amend	2-1-2008
150-305.270(10)	1-1-2008	Amend	2-1-2008	165-007-0030	12-31-2007	Amend	2-1-2008
150-305.270(4)-(A)	1-1-2008	Amend	2-1-2008	165-010-0005	12-31-2007	Amend	2-1-2008
150-305.992	1-1-2008	Amend	2-1-2008	165-010-0085	12-31-2007	Adopt	2-1-2008
150-307.262(2)	1-1-2008	Repeal	2-1-2008	165-012-0005	12-31-2007	Amend	2-1-2008
150-309.115(1)-(A)	1-1-2008	Repeal	2-1-2008	165-012-1020	1-29-2008	Adopt(T)	3-1-2008
150-311.676	1-1-2008	Amend	2-1-2008	165-013-0010	12-31-2007	Amend	2-1-2008
150-311.676-(B)	1-1-2008	Repeal	2-1-2008	165-013-0020	12-31-2007	Amend	2-1-2008
150-311.684	1-1-2008	Amend	2-1-2008	165-014-0005	12-31-2007	Amend	2-1-2008
150-311.689	1-1-2008	Amend	2-1-2008	165-014-0027	12-31-2007	Repeal	2-1-2008
150-311.806-(A)	1-1-2008	Amend	2-1-2008	165-014-0030	12-31-2007	Amend	2-1-2008
150-314.258	1-1-2008	Adopt	2-1-2008	165-014-0031	12-31-2007	Adopt	2-1-2008
150-314.280-(E)	1-1-2008	Amend	2-1-2008	165-014-0032	12-31-2007	Adopt	2-1-2008
150-314.280-(G)	1-1-2008	Amend	2-1-2008	165-014-0100	12-31-2007	Adopt	2-1-2008
150-314.280-(H)	1-1-2008	Amend	2-1-2008	165-014-0100	3-14-2008	Amend(T)	4-1-2008
150-314.280-(I)	1-1-2008	Amend	2-1-2008	165-014-0110	12-31-2007	Amend	2-1-2008
150-314.280-(J)	1-1-2008	Amend	2-1-2008	165-014-0260	12-31-2007	Amend	2-1-2008
150-314.280-(K)	1-1-2008	Amend	2-1-2008	165-014-0270	12-31-2007	Amend	2-1-2008
150-314.280-(L)	1-1-2008	Amend	2-1-2008	165-014-0275	12-31-2007	Adopt	2-1-2008
150-314.308	1-1-2008	Adopt	2-1-2008	165-014-0280	12-3-2007	Adopt	1-1-2008
150-314.415.(7)	1-1-2008	Amend	2-1-2008	165-020-0005	12-31-2007	Amend	2-1-2008
150-314.425-(B)	1-1-2008	Adopt	2-1-2008	165-020-0020	12-31-2007	Amend	2-1-2008
150-314.615-(D)	1-1-2008	Amend	2-1-2008	165-020-0021	12-31-2007	Adopt	2-1-2008
150-314.615-(E)	1-1-2008	Amend	2-1-2008	165-020-0035	12-31-2007	Amend	2-1-2008
150-315.262	1-1-2008	Amend	2-1-2008	165-020-0045	12-31-2007	Repeal	2-1-2008
150-315.354(5)	1-1-2008	Amend	2-1-2008	165-020-0050	12-31-2007	Amend	2-1-2008
150-315.521	1-1-2008	Adopt	2-1-2008	165-020-0055	12-31-2007	Amend	2-1-2008
150-316.127-(E)	1-1-2008	Amend	2-1-2008	165-020-2021	2-21-2008	Adopt(T)	4-1-2008
150-316.127(10)	1-1-2008	Adopt	2-1-2008	165-021-0000	12-31-2007	Repeal	2-1-2008
150-317.092	1-1-2008	Adopt	2-1-2008	165-021-0005	12-31-2007	Repeal	2-1-2008
150-317.705(3)(a)	1-1-2008	Amend	2-1-2008	165-021-0010	12-31-2007	Repeal	2-1-2008
150-317.705(3)(b)	1-1-2008	Amend	2-1-2008	166-400-0010	1-30-2008	Amend	3-1-2008
150-321.307(4)	1-1-2008	Repeal	2-1-2008	166-500-0015	11-29-2007	Amend	1-1-2008
150-321.485(4)	1-1-2008	Repeal	2-1-2008	170-002-0010	3-3-2008	Adopt	4-1-2008
150-323.320(1)(b)	2-4-2008	Adopt(T)	3-1-2008	170-061-0200	12-27-2007	Adopt	2-1-2008
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151-001-0010	12-13-2007	Amend(T)	1-1-2008	199-005-0005	3-7-2008	Adopt	4-1-2008
151-020-0045	12-13-2007	Amend(T)	1-1-2008	199-005-0010	3-7-2008	Adopt	4-1-2008
160-010-0600	1-1-2008	Adopt	1-1-2008	199-005-0015	3-7-2008	Adopt	4-1-2008
160-010-0610	1-1-2008	Adopt	1-1-2008	199-005-0020	3-7-2008	Adopt	4-1-2008
160-010-0620	1-1-2008	Adopt	1-1-2008	199-005-0025	3-7-2008	Adopt	4-1-2008
160-010-0630	1-1-2008	Adopt	1-1-2008	199-005-0030	3-7-2008	Adopt	4-1-2008
160-050-0180	1-15-2008	Amend	2-1-2008	199-005-0035	3-7-2008	Adopt	4-1-2008
160-050-0190	1-15-2008	Amend	2-1-2008	199-010-0068	1-2-2008	Adopt(T)	2-1-2008

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199-010-0095	3-7-2008	Amend(T)	4-1-2008	274-030-0565	1-1-2008	Amend	2-1-2008
199-020-0005	3-7-2008	Suspend	4-1-2008	274-030-0565(T)	1-1-2008	Repeal	2-1-2008
199-020-0007	3-7-2008	Adopt(T)	4-1-2008	274-030-0570	1-1-2008	Amend	2-1-2008
213-001-0010	4-12-2008	Adopt	2-1-2008	274-030-0570(T)	1-1-2008	Repeal	2-1-2008
213-003-0001	1-1-2008	Amend	2-1-2008	274-030-0575	1-1-2008	Amend	2-1-2008
213-017-0002	1-1-2008	Amend	2-1-2008	274-030-0575(T)	1-1-2008	Repeal	2-1-2008
213-017-0003	1-1-2008	Amend	2-1-2008	274-030-0600	1-1-2008	Amend	2-1-2008
213-017-0004	1-1-2008	Amend	2-1-2008	274-030-0600(T)	1-1-2008	Repeal	2-1-2008
213-017-0006	1-1-2008	Amend	2-1-2008	274-030-0602	1-1-2008	Adopt	2-1-2008
213-017-0007	1-1-2008	Amend	2-1-2008	274-030-0602(T)	1-1-2008	Repeal	2-1-2008
213-017-0008	1-1-2008	Amend	2-1-2008	274-030-0605	1-1-2008	Repeal	2-1-2008
213-017-0009	1-1-2008	Amend	2-1-2008	274-030-0610	1-1-2008	Amend	2-1-2008
213-017-0010	1-1-2008	Amend	2-1-2008	274-030-0610(T)	1-1-2008	Repeal	2-1-2008
213-018-0050	1-1-2008	Amend	2-1-2008	274-030-0620	1-1-2008	Amend	2-1-2008
213-018-0068	1-1-2008	Adopt	2-1-2008	274-030-0620(T)	1-1-2008	Repeal	2-1-2008
230-140-0000	1-29-2008	Adopt(T)	3-1-2008	274-030-0630	1-1-2008	Amend	2-1-2008
230-140-0010	1-29-2008	Adopt(T)	3-1-2008	274-030-0630(T)	1-1-2008	Repeal	2-1-2008
230-140-0020	1-29-2008	Adopt(T)	3-1-2008	274-030-0640	1-1-2008	Amend	2-1-2008
230-140-0030	1-29-2008	Adopt(T)	3-1-2008	274-030-0640(T)	1-1-2008	Repeal	2-1-2008
230-140-0040	1-29-2008	Adopt(T)	3-1-2008	274-045-0060	2-22-2008	Amend	4-1-2008
250-010-0075	12-10-2007	Adopt(T)	1-1-2008	274-045-0240	2-22-2008	Amend	4-1-2008
250-020-0221	1-15-2008	Amend	2-1-2008	291-026-0005	3-4-2008	Amend(T)	4-1-2008
255-060-0011	1-11-2008	Amend	2-1-2008	291-026-0010	3-4-2008	Amend(T)	4-1-2008
259-008-0010	1-15-2008	Amend(T)	2-1-2008	291-026-0015	3-4-2008	Amend(T)	4-1-2008
259-008-0010(T)	1-15-2008	Suspend	2-1-2008	291-026-0025	3-4-2008	Amend(T)	4-1-2008
259-008-0060	1-15-2008	Amend	2-1-2008	291-026-0030	3-4-2008	Suspend	4-1-2008
259-009-0070	1-15-2008	Amend	2-1-2008	291-026-0050	3-4-2008	Adopt(T)	4-1-2008
274-012-0001	1-7-2008	Amend(T)	2-1-2008	291-026-0085	3-4-2008	Suspend	4-1-2008
274-012-0001	2-22-2008	Amend	4-1-2008	291-026-0095	3-4-2008	Suspend	4-1-2008
274-012-0100	1-7-2008	Amend(T)	2-1-2008	291-026-0105	3-4-2008	Amend(T)	4-1-2008
274-012-0100	2-22-2008	Amend	4-1-2008	291-026-0115	3-4-2008	Amend(T)	4-1-2008
274-012-0120	1-7-2008	Amend(T)	2-1-2008	291-026-0125	3-4-2008	Amend(T)	4-1-2008
274-012-0120	2-22-2008	Amend	4-1-2008	291-026-0140	3-4-2008	Adopt(T)	4-1-2008
274-015-0005	2-22-2008	Repeal	4-1-2008	291-041-0010	2-4-2008	Amend	3-1-2008
274-025-0030	2-22-2008	Amend	4-1-2008	291-041-0015	2-4-2008	Amend	3-1-2008
274-030-0500	1-1-2008	Amend	2-1-2008	291-041-0016	2-4-2008	Amend	3-1-2008
274-030-0500	2-4-2008	Amend	3-1-2008	291-041-0017	2-4-2008	Adopt	3-1-2008
274-030-0500(T)	1-1-2008	Repeal	2-1-2008	291-041-0020	2-4-2008	Amend	3-1-2008
274-030-0505	1-1-2008	Amend	2-1-2008	291-041-0030	2-4-2008	Amend	3-1-2008
274-030-0505(T)	1-1-2008	Repeal	2-1-2008	291-041-0035	2-4-2008	Amend	3-1-2008
274-030-0506	1-1-2008	Amend	2-1-2008	291-041-0040	2-4-2008	Repeal	3-1-2008
274-030-0506(T)	1-1-2008	Repeal	2-1-2008	291-069-0010	12-1-2007	Suspend	1-1-2008
274-030-0510	1-1-2008	Amend	2-1-2008	291-069-0020	12-1-2007	Suspend	1-1-2008
274-030-0510(T)	1-1-2008	Repeal	2-1-2008	291-069-0031	12-1-2007	Suspend	1-1-2008
274-030-0515	1-1-2008	Amend	2-1-2008	291-069-0040	12-1-2007	Suspend	1-1-2008
274-030-0520	1-1-2008	Amend	2-1-2008	291-069-0050	12-1-2007	Suspend	1-1-2008
274-030-0520(T)	1-1-2008	Repeal	2-1-2008	291-069-0060	12-1-2007	Suspend	1-1-2008
274-030-0535	1-1-2008	Amend	2-1-2008	291-069-0070	12-1-2007	Suspend	1-1-2008
274-030-0545	1-1-2008	Amend	2-1-2008	291-069-0090	12-1-2007	Suspend	1-1-2008
274-030-0545(T)	1-1-2008	Repeal	2-1-2008	291-069-0100	12-1-2007	Suspend	1-1-2008
274-030-0550	1-1-2008	Amend	2-1-2008	291-069-0200	12-1-2007	Adopt(T)	1-1-2008
274-030-0550(T)	1-1-2008	Repeal	2-1-2008	291-069-0210	12-1-2007	Adopt(T)	1-1-2008
274-030-0555	1-1-2008	Amend	2-1-2008	291-069-0220	12-1-2007	Adopt(T)	1-1-2008
274-030-0555(T)	1-1-2008	Repeal	2-1-2008	291-069-0230	12-1-2007	Adopt(T)	1-1-2008
274-030-0560	1-1-2008	Amend	2-1-2008	291-069-0240	12-1-2007	Adopt(T)	1-1-2008

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291-069-0260	12-1-2007	Adopt(T)	1-1-2008	330-070-0073	12-1-2007	Amend	1-1-2008
291-069-0270	12-1-2007	Adopt(T)	1-1-2008	330-070-0089	12-1-2007	Amend	1-1-2008
291-069-0280	12-1-2007	Adopt(T)	1-1-2008	330-070-0091	12-1-2007	Amend	1-1-2008
291-131-0010	1-25-2008	Amend	3-1-2008	330-070-0097	12-1-2007	Amend	1-1-2008
291-131-0015	1-25-2008	Amend	3-1-2008	330-090-0105	12-1-2007	Amend	1-1-2008
291-131-0020	1-25-2008	Amend	3-1-2008	330-090-0110	12-1-2007	Amend	1-1-2008
291-131-0025	1-25-2008	Amend	3-1-2008	330-090-0120	12-1-2007	Amend	1-1-2008
291-131-0030	1-25-2008	Amend	3-1-2008	330-090-0130	12-1-2007	Amend	1-1-2008
291-131-0035	1-25-2008	Amend	3-1-2008	330-090-0135	12-1-2007	Amend	1-1-2008
291-131-0037	1-25-2008	Amend	3-1-2008	330-090-0140	12-1-2007	Amend	1-1-2008
291-164-0005	3-4-2008	Amend(T)	4-1-2008	330-090-0150	12-1-2007	Amend	1-1-2008
291-164-0010	3-4-2008	Amend(T)	4-1-2008	330-092-0005	3-1-2008	Adopt	4-1-2008
291-164-0015	3-4-2008	Amend(T)	4-1-2008	330-092-0010	3-1-2008	Adopt	4-1-2008
291-164-0020	3-4-2008	Amend(T)	4-1-2008	330-092-0015	3-1-2008	Adopt	4-1-2008
291-164-0025	3-4-2008	Amend(T)	4-1-2008	330-092-0020	3-1-2008	Adopt	4-1-2008
291-164-0030	3-4-2008	Amend(T)	4-1-2008	330-092-0025	3-1-2008	Adopt	4-1-2008
291-164-0045	3-4-2008	Suspend	4-1-2008	330-092-0030	3-1-2008	Adopt	4-1-2008
291-164-0050	3-4-2008	Adopt(T)	4-1-2008	330-092-0035	3-1-2008	Adopt	4-1-2008
309-011-0100	12-5-2007	Adopt(T)	1-1-2008	330-092-0040	3-1-2008	Adopt	4-1-2008
309-011-0100	2-12-2008	Suspend	3-1-2008	330-092-0045	3-1-2008	Adopt	4-1-2008
309-031-0215	12-1-2007	Amend(T)	1-1-2008	330-092-0050	3-1-2008	Adopt	4-1-2008
309-032-0455	12-11-2007	Amend	1-1-2008	330-092-0055	3-1-2008	Adopt	4-1-2008
309-032-1190	1-1-2008	Amend(T)	2-1-2008	330-092-0060	3-1-2008	Adopt	4-1-2008
309-033-0735	1-1-2008	Adopt(T)	2-1-2008	330-092-0065	3-1-2008	Adopt	4-1-2008
309-114-0000	12-1-2007	Amend(T)	1-1-2008	330-092-0070	3-1-2008	Adopt	4-1-2008
309-114-0005	12-1-2007	Amend(T)	1-1-2008	330-135-0010	1-2-2008	Adopt	2-1-2008
309-114-0010	12-1-2007	Amend(T)	1-1-2008	330-135-0015	1-2-2008	Adopt	2-1-2008
309-114-0015	12-1-2007	Amend(T)	1-1-2008	330-135-0020	1-2-2008	Adopt	2-1-2008
309-114-0020	12-1-2007	Amend(T)	1-1-2008	330-135-0025	1-2-2008	Adopt	2-1-2008
309-114-0025	12-1-2007	Amend(T)	1-1-2008	330-135-0030	1-2-2008	Adopt	2-1-2008
309-118-0015	12-1-2007	Amend(T)	1-1-2008	330-135-0035	1-2-2008	Adopt	2-1-2008
330-070-0048	12-1-2007	Amend	1-1-2008	330-135-0040	1-2-2008	Adopt	2-1-2008
330-007-0200	12-13-2007	Adopt	1-1-2008	330-135-0045	1-2-2008	Adopt	2-1-2008
330-007-0210	12-13-2007	Adopt	1-1-2008	330-135-0050	1-2-2008	Adopt	2-1-2008
330-007-0220	12-13-2007	Adopt	1-1-2008	330-135-0055	1-2-2008	Adopt	2-1-2008
330-007-0230	12-13-2007	Adopt	1-1-2008	330-150-0005	1-30-2008	Adopt	3-1-2008
330-007-0240	12-13-2007	Adopt	1-1-2008	330-150-0015	1-30-2008	Adopt	3-1-2008
330-007-0250	12-13-2007	Adopt	1-1-2008	330-150-0020	1-30-2008	Adopt	3-1-2008
330-007-0260	12-13-2007	Adopt	1-1-2008	330-150-0025	1-30-2008	Adopt	3-1-2008
330-007-0270	12-13-2007	Adopt	1-1-2008	330-150-0030	1-30-2008	Adopt	3-1-2008
330-007-0280	12-13-2007	Adopt	1-1-2008	331-800-0010	3-15-2008	Adopt(T)	4-1-2008
330-007-0290	12-13-2007	Adopt	1-1-2008	331-800-0020	3-15-2008	Adopt(T)	4-1-2008
330-007-0300	12-13-2007	Adopt	1-1-2008	331-810-0020	3-15-2008	Adopt(T)	4-1-2008
330-007-0310	12-13-2007	Adopt	1-1-2008	331-810-0030	3-15-2008	Adopt(T)	4-1-2008
330-007-0320	12-13-2007	Adopt	1-1-2008	331-810-0035	3-15-2008	Adopt(T)	4-1-2008
330-007-0330	12-13-2007	Adopt	1-1-2008	331-810-0040	3-15-2008	Adopt(T)	4-1-2008
330-070-0013	12-1-2007	Amend	1-1-2008	331-820-0010	3-15-2008	Adopt(T)	4-1-2008
330-070-0010	12-1-2007	Amend	1-1-2008	331-820-0020	3-15-2008	Adopt(T)	4-1-2008
330-070-0014	12-1-2007	Amend	1-1-2008	331-850-0010	3-15-2008	Adopt(T)	4-1-2008
330-070-0021	12-1-2007	Amend	1-1-2008	333-008-0000	1-1-2008	Amend	2-1-2008
330-070-0022	12-1-2007	Amend	1-1-2008	333-008-0010	1-1-2008	Amend	2-1-2008
330-070-0025	12-1-2007	Amend	1-1-2008	333-008-0020	1-1-2008	Amend	2-1-2008
330-070-0026	12-1-2007	Amend	1-1-2008	333-008-0025	1-1-2008	Amend	2-1-2008
330-070-0059	12-1-2007	Amend	1-1-2008	333-008-0030	1-1-2008	Amend	2-1-2008
330-070-0060	12-1-2007	Amend	1-1-2008	333-008-0040	1-1-2008	Amend	2-1-2008

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333-008-0060	1-1-2008	Amend	2-1-2008	340-150-0020	3-10-2008	Amend	4-1-2008
333-008-0070	1-1-2008	Amend	2-1-2008	340-150-0021	3-10-2008	Amend	4-1-2008
333-008-0080	1-1-2008	Amend	2-1-2008	340-150-0052	3-10-2008	Amend	4-1-2008
333-008-0090	1-1-2008	Amend	2-1-2008	340-150-0102	3-10-2008	Amend	4-1-2008
333-008-0110	1-1-2008	Amend	2-1-2008	340-150-0110	3-10-2008	Amend	4-1-2008
333-008-0120	1-1-2008	Amend	2-1-2008	340-150-0135	3-10-2008	Amend	4-1-2008
333-050-0020	1-8-2008	Amend(T)	2-1-2008	340-150-0150	3-10-2008	Amend	4-1-2008
333-050-0050	1-8-2008	Amend(T)	2-1-2008	340-150-0152	3-10-2008	Amend	4-1-2008
333-050-0120	1-8-2008	Amend(T)	2-1-2008	340-150-0160	3-10-2008	Amend	4-1-2008
333-061-0030	2-15-2008	Amend	3-1-2008	340-150-0163	3-10-2008	Amend	4-1-2008
333-061-0032	2-15-2008	Amend	3-1-2008	340-150-0166	3-10-2008	Amend	4-1-2008
333-061-0034	2-15-2008	Amend	3-1-2008	340-150-0167	3-10-2008	Amend	4-1-2008
333-061-0036	2-15-2008	Amend	3-1-2008	340-150-0168	3-10-2008	Amend	4-1-2008
333-061-0040	2-15-2008	Amend	3-1-2008	340-150-0180	3-10-2008	Amend	4-1-2008
333-061-0043	2-15-2008	Amend	3-1-2008	340-150-0200	3-10-2008	Amend	4-1-2008
333-061-0045	2-15-2008	Amend	3-1-2008	340-150-0210	3-10-2008	Adopt	4-1-2008
333-061-0050	2-15-2008	Amend	3-1-2008	340-150-0250	3-10-2008	Amend	4-1-2008
333-061-0061	2-15-2008	Amend	3-1-2008	340-150-0300	3-10-2008	Amend	4-1-2008
333-061-0070	2-15-2008	Amend	3-1-2008	340-150-0310	3-10-2008	Amend	4-1-2008
333-061-0072	2-15-2008	Amend	3-1-2008	340-150-0350	3-10-2008	Amend	4-1-2008
333-061-0076	2-15-2008	Amend	3-1-2008	340-150-0352	3-10-2008	Amend	4-1-2008
333-061-0215	2-15-2008	Amend	3-1-2008	340-150-0354	3-10-2008	Amend	4-1-2008
333-061-0245	2-15-2008	Amend	3-1-2008	340-150-0360	3-10-2008	Amend	4-1-2008
333-061-0250	2-15-2008	Amend	3-1-2008	340-150-0410	3-10-2008	Amend	4-1-2008
333-061-0260	2-15-2008	Amend	3-1-2008	340-150-0430	3-10-2008	Amend	4-1-2008
333-061-0265	2-15-2008	Amend	3-1-2008	340-150-0450	3-10-2008	Amend	4-1-2008
333-080-0040	7-1-2008	Adopt	4-1-2008	340-150-0455	3-10-2008	Amend	4-1-2008
333-080-0050	7-1-2008	Adopt	4-1-2008	340-150-0460	3-10-2008	Amend	4-1-2008
333-150-0000	3-5-2008	Amend	4-1-2008	340-150-0465	3-10-2008	Amend	4-1-2008
333-520-0073	3-7-2008	Adopt	4-1-2008	340-150-0470	3-10-2008	Amend	4-1-2008
333-520-0110	7-1-2008	Amend	4-1-2008	340-150-0510	3-10-2008	Amend	4-1-2008
333-536-0005	1-1-2008	Amend	2-1-2008	340-150-0555	3-10-2008	Amend	4-1-2008
333-536-0010	1-1-2008	Amend	2-1-2008	340-150-0560	3-10-2008	Amend	4-1-2008
333-536-0015	1-1-2008	Amend	2-1-2008	340-160-0030	3-10-2008	Amend	4-1-2008
333-536-0020	1-1-2008	Amend	2-1-2008	340-160-0150	3-10-2008	Amend	4-1-2008
333-536-0030	1-1-2008	Amend	2-1-2008	340-162-0005	3-10-2008	Amend	4-1-2008
333-536-0040	1-1-2008	Amend	2-1-2008	340-162-0010	3-10-2008	Amend	4-1-2008
333-536-0050	1-1-2008	Amend	2-1-2008	340-162-0020	3-10-2008	Amend	4-1-2008
333-536-0070	1-1-2008	Amend	2-1-2008	340-162-0040	3-10-2008	Amend	4-1-2008
333-536-0075	1-1-2008	Amend	2-1-2008	340-162-0054	3-10-2008	Repeal	4-1-2008
333-536-0080	1-1-2008	Amend	2-1-2008	340-162-0150	3-10-2008	Amend	4-1-2008
333-536-0085	1-1-2008	Amend	2-1-2008	340-222-0020	3-6-2008	Amend(T)	4-1-2008
333-536-0090	1-1-2008	Amend	2-1-2008	340-248-0260	11-30-2007	Amend	1-1-2008
333-536-0095	1-1-2008	Amend	2-1-2008	350-011-0003	4-1-2008	Amend	4-1-2008
333-536-0100	1-1-2008	Repeal	2-1-2008	350-011-0011	4-1-2008	Adopt	4-1-2008
333-536-0105	1-1-2008	Adopt	2-1-2008	350-012-0007	4-1-2008	Amend	4-1-2008
333-536-0115	1-1-2008	Adopt	2-1-2008	350-012-0008	4-1-2008	Amend	4-1-2008
340-011-0010	2-25-2008	Amend	4-1-2008	350-016-0009	4-1-2008	Amend	4-1-2008
340-011-0029	2-25-2008	Amend	4-1-2008	407-005-0110	12-1-2007	Amend	1-1-2008
340-054-0035	2-27-2008	Amend	4-1-2008	407-012-0005	12-1-2007	Adopt	1-1-2008
340-054-0060	2-27-2008	Amend	4-1-2008	407-012-0010	12-1-2007	Adopt	1-1-2008
340-122-0210	3-10-2008	Amend	4-1-2008	407-012-0015	12-1-2007	Adopt	1-1-2008
340-122-0330	3-10-2008	Amend	4-1-2008	407-012-0020	12-1-2007	Adopt	1-1-2008
340-150-0006	3-10-2008	Amend	4-1-2008	407-012-0025	12-1-2007	Adopt	1-1-2008
340-150-0008	3-10-2008	Amend	4-1-2008	407-014-0300	1-1-2008	Adopt	2-1-2008

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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
407-120-0114	2-1-2008	Adopt	3-1-2008	410-050-0130	1-25-2008	Amend	3-1-2008
407-120-0114(T)	2-1-2008	Repeal	3-1-2008	410-050-0140	1-25-2008	Amend	3-1-2008
407-120-0116	1-1-2008	Adopt(T)	2-1-2008	410-050-0150	1-25-2008	Amend	3-1-2008
407-120-0116	2-1-2008	Adopt	3-1-2008	410-050-0160	1-25-2008	Amend	3-1-2008
407-120-0116(T)	2-1-2008	Repeal	3-1-2008	410-050-0170	1-25-2008	Amend	3-1-2008
407-120-0118	1-1-2008	Adopt(T)	2-1-2008	410-050-0180	1-25-2008	Amend	3-1-2008
407-120-0118	2-1-2008	Adopt	3-1-2008	410-050-0190	1-25-2008	Amend	3-1-2008
407-120-0118(T)	2-1-2008	Repeal	3-1-2008	410-050-0200	1-25-2008	Amend	3-1-2008
407-120-0165	1-1-2008	Adopt(T)	2-1-2008	410-050-0210	1-25-2008	Amend	3-1-2008
407-120-0165	2-1-2008	Adopt	3-1-2008	410-050-0220	1-25-2008	Amend	3-1-2008
407-120-0165(T)	2-1-2008	Repeal	3-1-2008	410-050-0230	1-25-2008	Amend	3-1-2008
407-120-0300	1-1-2008	Adopt	2-1-2008	410-050-0240	1-25-2008	Amend	3-1-2008
407-120-0310	1-1-2008	Adopt	2-1-2008	410-050-0250	1-25-2008	Amend	3-1-2008
407-120-0320	1-1-2008	Adopt	2-1-2008	410-050-0401	1-25-2008	Amend	3-1-2008
407-120-0330	1-1-2008	Adopt	2-1-2008	410-050-0411	1-25-2008	Amend	3-1-2008
407-120-0340	1-1-2008	Adopt	2-1-2008	410-050-0421	1-25-2008	Amend	3-1-2008
407-120-0350	1-1-2008	Adopt	2-1-2008	410-050-0431	1-25-2008	Amend	3-1-2008
407-120-0360	1-1-2008	Adopt	2-1-2008	410-050-0441	1-25-2008	Repeal	3-1-2008
407-120-0370	1-1-2008	Adopt	2-1-2008	410-050-0451	1-25-2008	Amend	3-1-2008
407-120-0380	1-1-2008	Adopt	2-1-2008	410-050-0461	1-25-2008	Amend	3-1-2008
410-001-0100	1-1-2008	Amend(T)	2-1-2008	410-050-0471	1-25-2008	Amend	3-1-2008
410-001-0100	2-1-2008	Am. & Ren.	3-1-2008	410-050-0481	1-25-2008	Amend	3-1-2008
410-001-0100(T)	2-1-2008	Repeal	3-1-2008	410-050-0491	1-25-2008	Amend	3-1-2008
410-001-0110	1-1-2008	Amend(T)	2-1-2008	410-050-0501	1-25-2008	Amend	3-1-2008
410-001-0110	2-1-2008	Am. & Ren.	3-1-2008	410-050-0511	1-25-2008	Amend	3-1-2008
410-001-0110(T)	2-1-2008	Repeal	3-1-2008	410-050-0521	1-25-2008	Amend	3-1-2008
410-001-0120	1-1-2008	Amend(T)	2-1-2008	410-050-0531	1-25-2008	Amend	3-1-2008
410-001-0120	2-1-2008	Am. & Ren.	3-1-2008	410-050-0541	1-25-2008	Amend	3-1-2008
410-001-0120(T)	2-1-2008	Repeal	3-1-2008	410-050-0551	1-25-2008	Amend	3-1-2008

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410-050-0561	1-25-2008	Amend	3-1-2008	410-123-1060	1-1-2008	Amend	1-1-2008
410-050-0571	1-25-2008	Repeal	3-1-2008	410-123-1100	1-1-2008	Amend	1-1-2008
410-050-0581	1-25-2008	Repeal	3-1-2008	410-123-1160	1-1-2008	Amend	1-1-2008
410-050-0591	1-25-2008	Amend	3-1-2008	410-123-1200	1-1-2008	Amend	1-1-2008
410-050-0601	1-25-2008	Adopt	3-1-2008	410-123-1220	1-1-2008	Amend	1-1-2008
410-050-0700	1-25-2008	Amend	3-1-2008	410-123-1240	1-1-2008	Amend	1-1-2008
410-050-0710	1-25-2008	Amend	3-1-2008	410-123-1260	1-1-2008	Amend	1-1-2008
410-050-0720	1-25-2008	Amend	3-1-2008	410-123-1490	1-1-2008	Amend	1-1-2008
410-050-0730	1-25-2008	Amend	3-1-2008	410-123-1620	1-1-2008	Amend	1-1-2008
410-050-0740	1-25-2008	Amend	3-1-2008	410-123-1670	1-1-2008	Amend	1-1-2008
410-050-0750	1-25-2008	Amend	3-1-2008	410-125-0080	12-20-2007	Amend(T)	2-1-2008
410-050-0760	1-25-2008	Amend	3-1-2008	410-127-0060	1-1-2008	Amend	1-1-2008
410-050-0770	1-25-2008	Amend	3-1-2008	410-129-0070	1-1-2008	Amend	1-1-2008
410-050-0780	1-25-2008	Amend	3-1-2008	410-129-0200	1-1-2008	Amend	1-1-2008
410-050-0790	1-25-2008	Amend	3-1-2008	410-130-0200	12-20-2007	Amend(T)	2-1-2008
410-050-0800	1-25-2008	Amend	3-1-2008	410-130-0580	12-20-2007	Amend(T)	2-1-2008
410-050-0810	1-25-2008	Amend	3-1-2008	410-141-0180	1-1-2008	Amend	1-1-2008
410-050-0820	1-25-2008	Amend	3-1-2008	410-141-0480	1-1-2008	Amend	1-1-2008
410-050-0830	1-25-2008	Amend	3-1-2008	410-141-0520	12-20-2007	Amend(T)	2-1-2008
410-050-0840	1-25-2008	Amend	3-1-2008	410-141-0520(T)	12-20-2007	Suspend	2-1-2008
410-050-0850	1-25-2008	Amend	3-1-2008	410-142-0020	1-1-2008	Amend	1-1-2008
410-050-0860	1-25-2008	Amend	3-1-2008	410-146-0000	1-1-2008	Amend	1-1-2008
410-050-0861	1-1-2008	Amend	2-1-2008	410-146-0020	1-1-2008	Amend	1-1-2008
410-050-0861	1-25-2008	Amend	3-1-2008	410-146-0021	1-1-2008	Amend	1-1-2008
410-050-0870	1-25-2008	Amend	3-1-2008	410-146-0025	1-1-2008	Repeal	1-1-2008
410-120-0000	1-1-2008	Amend	1-1-2008	410-146-0040	1-1-2008	Amend	1-1-2008
410-120-0010	12-5-2007	Adopt(T)	1-1-2008	410-146-0060	1-1-2008	Amend	1-1-2008
410-120-0025	3-14-2008	Amend(T)	4-1-2008	410-146-0075	1-1-2008	Amend	1-1-2008
410-120-1200	1-1-2008	Amend	1-1-2008	410-146-0080	1-1-2008	Am. & Ren.	1-1-2008
410-120-1230	3-1-2008	Amend	4-1-2008	410-146-0080	1-1-2008	Am. & Ren.	1-1-2008
410-120-1295	1-1-2008	Amend	1-1-2008	410-146-0080	1-1-2008	Amend	1-1-2008
410-120-1320	1-1-2008	Amend	1-1-2008	410-146-0100	1-1-2008	Amend	1-1-2008
410-120-1340	1-1-2008	Amend	1-1-2008	410-146-0120	1-1-2008	Amend	1-1-2008
410-120-1397	1-1-2008	Amend	1-1-2008	410-146-0130	1-1-2008	Amend	1-1-2008
410-120-1560	1-1-2008	Amend	1-1-2008	410-146-0140	1-1-2008	Amend	1-1-2008
410-120-1570	1-1-2008	Amend	1-1-2008	410-146-0160	1-1-2008	Amend	1-1-2008
410-121-0040	1-1-2008	Amend	1-1-2008	410-146-0180	1-1-2008	Repeal	1-1-2008
410-121-0135	1-1-2008	Amend	1-1-2008	410-146-0200	1-1-2008	Amend	1-1-2008
410-121-0140	1-1-2008	Amend	1-1-2008	410-146-0220	1-1-2008	Amend	1-1-2008
410-121-0146	1-1-2008	Amend	1-1-2008	410-146-0240	1-1-2008	Amend	1-1-2008
410-121-0148	1-1-2008	Amend	1-1-2008	410-146-0340	1-1-2008	Amend	1-1-2008
410-121-0150	1-1-2008	Amend	1-1-2008	410-146-0380	1-1-2008	Amend	1-1-2008
410-121-0155	1-1-2008	Amend	1-1-2008	410-146-0400	1-1-2008	Repeal	1-1-2008
410-121-0160	1-1-2008	Amend	1-1-2008	410-146-0420	1-1-2008	Repeal	1-1-2008
410-121-0300	1-1-2008	Amend	1-1-2008	410-146-0440	1-1-2008	Amend	1-1-2008
410-122-0202	1-1-2008	Amend	1-1-2008	410-146-0460	1-1-2008	Amend	1-1-2008
410-122-0203	1-1-2008	Amend	1-1-2008	410-147-0365	1-1-2008	Amend	1-1-2008
410-122-0320	1-1-2008	Amend	1-1-2008	411-070-0005	3-1-2008	Amend	4-1-2008
410-122-0325	1-1-2008	Amend	1-1-2008	411-070-0005(T)		411	4-1-2008
410-122-0330	1-1-2008	Amend	1-1-2008	411-070-0027	3-1-2008	Amend	4-1-2008
410-122-0380	1-1-2008	Amend	1-1-2008	411-070-0027(T)	3-1-2008	Repeal	4-1-2008
410-122-0662	1-1-2008	Adopt	1-1-2008	411-070-0035	3-1-2008	Amend	4-1-2008
410-122-0678	1-1-2008	Amend	1-1-2008	411-070-0035(T)	3-1-2008	Repeal	4-1-2008
410-122-0720	1-1-2008	Amend	1-1-2008	411-070-0045	3-1-2008	Amend	4-1-2008
410-123-1000	1-1-2008	Amend	1-1-2008	411-070-0085	3-1-2008	Amend	4-1-2008
410-123-1040	1-1-2008	Repeal	1-1-2008	411-070-0085(T)	3-1-2008	Repeal	4-1-2008

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411-070-0091	3-1-2008	Amend	4-1-2008	413-015-0520	1-1-2008	Adopt(T)	2-1-2008
411-070-0091(T)	3-1-2008	Repeal	4-1-2008	413-015-0525	1-1-2008	Adopt(T)	2-1-2008
411-070-0095	3-1-2008	Amend	4-1-2008	413-015-0530	1-1-2008	Adopt(T)	2-1-2008
411-070-0095(T)	3-1-2008	Repeal	4-1-2008	413-015-0535	1-1-2008	Adopt(T)	2-1-2008
411-070-0359	3-1-2008	Amend	4-1-2008	413-015-0540	1-1-2008	Adopt(T)	2-1-2008
411-070-0359(T)	3-1-2008	Repeal	4-1-2008	413-015-0545	1-1-2008	Adopt(T)	2-1-2008
411-070-0428	3-1-2008	Repeal	4-1-2008	413-015-0550	1-1-2008	Adopt(T)	2-1-2008
411-070-0442	3-1-2008	Amend	4-1-2008	413-015-0555	1-1-2008	Adopt(T)	2-1-2008
411-070-0442(T)	3-1-2008	Repeal	4-1-2008	413-015-0560	1-1-2008	Adopt(T)	2-1-2008
411-070-0452	3-1-2008	Amend	4-1-2008	413-015-0565	1-1-2008	Adopt(T)	2-1-2008
411-070-0452(T)	3-1-2008	Repeal	4-1-2008	413-015-1000	1-1-2008	Amend(T)	2-1-2008
411-070-0462	3-1-2008	Repeal	4-1-2008	413-070-0600	1-1-2008	Amend(T)	2-1-2008
411-070-0465	3-1-2008	Amend	4-1-2008	413-070-0620	1-1-2008	Amend(T)	2-1-2008
411-070-0465(T)	3-1-2008	Repeal	4-1-2008	413-070-0625	1-1-2008	Amend(T)	2-1-2008
411-085-0005	3-1-2008	Amend(T)	3-1-2008	413-070-0640	1-1-2008	Amend(T)	2-1-2008
411-085-0200	3-6-2008	Amend	4-1-2008	413-070-0810	1-1-2008	Amend(T)	2-1-2008
411-085-0310	3-6-2008	Amend	4-1-2008	413-070-0860	1-1-2008	Amend(T)	2-1-2008
411-086-0100	3-1-2008	Amend(T)	3-1-2008	413-070-0880	1-1-2008	Amend(T)	2-1-2008
411-086-0200	3-6-2008	Amend	4-1-2008	413-090-0010	1-1-2008	Amend(T)	2-1-2008
411-088-0070	3-6-2008	Amend	4-1-2008	413-100-0040	1-1-2008	Suspend	2-1-2008
411-330-0020	12-28-2007	Amend	2-1-2008	413-100-0900	1-1-2008	Adopt(T)	2-1-2008
411-330-0020(T)	12-28-2007	Repeal	2-1-2008	413-100-0905	1-1-2008	Adopt(T)	2-1-2008
411-330-0030	12-28-2007	Amend	2-1-2008	413-100-0910	1-1-2008	Adopt(T)	2-1-2008
411-330-0030(T)	12-28-2007	Repeal	2-1-2008	413-100-0915	1-1-2008	Adopt(T)	2-1-2008
411-340-0020	1-1-2008	Amend(T)	2-1-2008	413-100-0920	1-1-2008	Adopt(T)	2-1-2008
411-340-0060	1-1-2008	Amend(T)	2-1-2008	413-100-0925	1-1-2008	Adopt(T)	2-1-2008
411-340-0070	1-1-2008	Amend(T)	2-1-2008	413-100-0930	1-1-2008	Adopt(T)	2-1-2008
411-340-0130	1-1-2008	Amend(T)	2-1-2008	413-100-0935	1-1-2008	Adopt(T)	2-1-2008
411-340-0150	1-1-2008	Amend(T)	2-1-2008	413-100-0940	1-1-2008	Adopt(T)	2-1-2008
411-340-0170	1-1-2008	Amend(T)	2-1-2008	413-120-0060	12-12-2007	Amend(T)	1-1-2008
413-010-0400	12-1-2007	Amend	1-1-2008	413-120-0400	1-1-2008	Amend(T)	2-1-2008
413-010-0410	12-1-2007	Amend	1-1-2008	413-120-0410	1-1-2008	Amend(T)	2-1-2008
413-010-0420	12-1-2007	Amend	1-1-2008	413-120-0420	1-1-2008	Amend(T)	2-1-2008
413-010-0430	12-1-2007	Amend	1-1-2008	413-120-0430	1-1-2008	Suspend	2-1-2008
413-010-0440	12-1-2007	Amend	1-1-2008	413-120-0440	1-1-2008	Amend(T)	2-1-2008
413-010-0450	12-1-2007	Repeal	1-1-2008	413-120-0450	1-1-2008	Amend(T)	2-1-2008
413-010-0460	12-1-2007	Repeal	1-1-2008	413-120-0455	1-1-2008	Amend(T)	2-1-2008
413-010-0470	12-1-2007	Repeal	1-1-2008	413-120-0460	1-1-2008	Amend(T)	2-1-2008
413-010-0480	12-1-2007	Amend	1-1-2008	413-120-0470	1-1-2008	Amend(T)	2-1-2008
413-010-0490	12-1-2007	Repeal	1-1-2008	413-200-0210	1-1-2008	Amend(T)	2-1-2008
413-015-0100	12-3-2007	Amend(T)	1-1-2008	413-200-0220	1-1-2008	Amend(T)	2-1-2008
413-015-0115	12-3-2007	Amend(T)	1-1-2008	413-200-0404	1-1-2008	Adopt(T)	2-1-2008
413-015-0115	1-1-2008	Amend(T)	2-1-2008	413-200-0409	1-1-2008	Adopt(T)	2-1-2008
413-015-0115(T)	12-3-2007	Suspend	1-1-2008	413-200-0414	1-1-2008	Adopt(T)	2-1-2008
413-015-0115(T)	1-1-2008	Suspend	2-1-2008	413-200-0419	1-1-2008	Adopt(T)	2-1-2008
413-015-0205	12-3-2007	Amend(T)	1-1-2008	413-200-0424	1-1-2008	Adopt(T)	2-1-2008
413-015-0205	1-1-2008	Amend(T)	2-1-2008	415-010-0005	12-5-2007	Adopt(T)	1-1-2008
413-015-0205(T)	1-1-2008	Suspend	2-1-2008	415-010-0005	2-12-2008	Suspend	3-1-2008
413-015-0210	1-1-2008	Amend(T)	2-1-2008	415-051-0045	12-11-2007	Amend	1-1-2008
413-015-0211	1-1-2008	Amend(T)	2-1-2008	436-010-0210	1-2-2008	Amend(T)	1-1-2008
413-015-0212	1-1-2008	Amend(T)	2-1-2008	436-010-0220	1-2-2008	Amend(T)	1-1-2008
413-015-0215	1-1-2008	Amend(T)	2-1-2008	436-010-0280	1-2-2008	Amend(T)	1-1-2008
413-015-0220	1-1-2008	Amend(T)	2-1-2008	436-035-0500	12-28-2007	Amend(T)	2-1-2008
413-015-0405	1-1-2008	Amend(T)	2-1-2008	437-001-0015	3-1-2008	Amend	4-1-2008
413-015-0415	1-1-2008	Amend(T)	2-1-2008	437-001-0205	1-1-2008	Amend	1-1-2008
413-015-0415(T)	1-1-2008	Suspend	2-1-2008	437-001-0215	1-1-2008	Amend	1-1-2008

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437-001-0240	1-1-2008	Amend	1-1-2008	441-755-0140	11-30-2007	Adopt	1-1-2008
437-001-0255	1-1-2008	Amend	1-1-2008	441-755-0150	11-30-2007	Adopt	1-1-2008
437-001-0295	12-3-2007	Amend	1-1-2008	441-755-0160	11-30-2007	Adopt	1-1-2008
437-001-0700	1-1-2008	Amend	2-1-2008	441-755-0170	11-30-2007	Adopt	1-1-2008
437-001-0706	1-1-2008	Adopt	2-1-2008	441-755-0200	11-30-2007	Adopt	1-1-2008
437-001-0740	1-1-2008	Amend	2-1-2008	441-755-0210	11-30-2007	Adopt	1-1-2008
437-002-0100	12-3-2007	Amend	1-1-2008	441-755-0220	11-30-2007	Adopt	1-1-2008
437-002-0122	12-3-2007	Adopt	1-1-2008	441-755-0300	11-30-2007	Adopt	1-1-2008
437-007-0010	7-1-2008	Amend	4-1-2008	441-755-0310	11-30-2007	Adopt	1-1-2008
437-007-0025	7-1-2008	Amend	4-1-2008	443-002-0010	1-2-2008	Amend	2-1-2008
437-007-0685	7-1-2008	Repeal	4-1-2008	443-002-0030	1-2-2008	Amend(T)	2-1-2008
437-007-0775	3-5-2008	Amend	4-1-2008	443-002-0060	1-2-2008	Amend	2-1-2008
437-007-0780	3-5-2008	Amend	4-1-2008	443-002-0070	1-2-2008	Amend	2-1-2008
437-007-1500	7-1-2008	Adopt	4-1-2008	443-002-0095	1-2-2008	Repeal	2-1-2008
437-007-1505	7-1-2008	Adopt	4-1-2008	443-002-0100	1-2-2008	Amend	2-1-2008
437-007-1510	7-1-2008	Adopt	4-1-2008	459-007-0110	11-23-2007	Amend	1-1-2008
437-007-1520	7-1-2008	Adopt	4-1-2008	459-007-0160	11-23-2007	Adopt	1-1-2008
437-007-1525	7-1-2008	Adopt	4-1-2008	459-007-0290	11-23-2007	Amend	1-1-2008
437-007-1530	7-1-2008	Adopt	4-1-2008	459-007-0530	11-23-2007	Amend	1-1-2008
437-007-1535	7-1-2008	Adopt	4-1-2008	459-009-0084	11-23-2007	Amend	1-1-2008
438-005-0046	1-1-2008	Amend	1-1-2008	459-009-0085	11-23-2007	Amend	1-1-2008
438-005-0050	1-1-2008	Amend	1-1-2008	459-009-0090	11-23-2007	Amend	1-1-2008
438-005-0055	1-1-2008	Amend	1-1-2008	459-010-0003	11-23-2007	Amend	1-1-2008
438-006-0020	1-1-2008	Amend	1-1-2008	459-010-0014	11-23-2007	Amend	1-1-2008
438-006-0100	1-1-2008	Amend	1-1-2008	459-010-0035	11-23-2007	Amend	1-1-2008
438-009-0005	1-1-2008	Amend	1-1-2008	459-010-0055	11-23-2007	Amend	1-1-2008
438-009-0010	1-1-2008	Amend	1-1-2008	459-011-0050	11-23-2007	Amend	1-1-2008
438-009-0020	1-1-2008	Amend	1-1-2008	459-013-0110	11-23-2007	Amend	1-1-2008
438-009-0022	1-1-2008	Amend	1-1-2008	459-017-0060	11-23-2007	Amend	1-1-2008
438-009-0025	1-1-2008	Amend	1-1-2008	459-045-0030	11-23-2007	Amend	1-1-2008
438-009-0028	1-1-2008	Amend	1-1-2008	459-050-0080	11-23-2007	Amend	1-1-2008
438-009-0030	1-1-2008	Amend	1-1-2008	459-050-0220	11-23-2007	Amend	1-1-2008
438-009-0035	1-1-2008	Amend	1-1-2008	459-070-0001	11-23-2007	Amend	1-1-2008
438-011-0020	1-1-2008	Amend	1-1-2008	459-075-0010	11-23-2007	Amend	1-1-2008
438-012-0035	1-1-2008	Amend	1-1-2008	459-075-0020	11-23-2007	Adopt	1-1-2008
438-015-0005	1-1-2008	Amend	1-1-2008	459-075-0150	11-23-2007	Amend	1-1-2008
438-015-0019	1-1-2008	Adopt	1-1-2008	459-080-0020	11-23-2007	Adopt	1-1-2008
438-015-0022	1-1-2008	Adopt	1-1-2008	459-080-0250	11-23-2007	Amend	1-1-2008
438-015-0080	1-1-2008	Amend	1-1-2008	461-001-0000	1-1-2008	Amend	2-1-2008
438-019-0030	1-1-2008	Amend	1-1-2008	461-001-0000	1-1-2008	Amend(T)	2-1-2008
441-500-0020	1-28-2008	Amend	3-1-2008	461-001-0000	3-1-2008	Amend	4-1-2008
441-500-0030	1-28-2008	Amend	3-1-2008	461-001-0000(T)	1-1-2008	Repeal	2-1-2008
441-710-0500	1-28-2008	Amend	3-1-2008	461-001-0000(T)	3-1-2008	Repeal	4-1-2008
441-730-0000	12-27-2007	Amend	1-1-2008	461-001-0025	3-1-2008	Amend	4-1-2008
441-730-0010	12-27-2007	Amend	1-1-2008	461-001-0025(T)	3-1-2008	Repeal	4-1-2008
441-730-0015	12-27-2007	Amend	1-1-2008	461-001-0035	1-1-2008	Amend	2-1-2008
441-730-0030	1-28-2008	Amend	3-1-2008	461-025-0310	3-1-2008	Amend	4-1-2008
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441-730-0275	12-27-2007	Amend	1-1-2008	461-025-0350	1-1-2008	Amend(T)	2-1-2008
441-730-0310	12-27-2007	Amend	1-1-2008	461-101-0010	3-1-2008	Amend	4-1-2008
441-755-0000	11-30-2007	Adopt	1-1-2008	461-101-0010(T)	3-1-2008	Repeal	4-1-2008
441-755-0010	11-30-2007	Adopt	1-1-2008	461-105-0010	3-1-2008	Amend	4-1-2008
441-755-0100	11-30-2007	Adopt	1-1-2008	461-105-0010(T)	3-1-2008	Repeal	4-1-2008
441-755-0110	11-30-2007	Adopt	1-1-2008	461-110-0630	3-1-2008	Amend	4-1-2008
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461-115-0050	1-28-2008	Amend(T)	3-1-2008	461-135-0475(T)	3-1-2008	Repeal	4-1-2008
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461-115-0430	3-1-2008	Amend	4-1-2008	461-135-0505(T)	3-1-2008	Repeal	4-1-2008
461-115-0430(T)	3-1-2008	Repeal	4-1-2008	461-135-0506	3-1-2008	Amend	4-1-2008
461-115-0700	1-1-2008	Amend	2-1-2008	461-135-0506(T)	3-1-2008	Repeal	4-1-2008
461-115-0715	3-1-2008	Adopt	4-1-2008	461-135-0725	1-1-2008	Amend	2-1-2008
461-115-0715(T)	3-1-2008	Repeal	4-1-2008	461-135-0780	1-1-2008	Amend	2-1-2008
461-120-0120	1-30-2008	Amend(T)	3-1-2008	461-135-0835	1-1-2008	Amend	2-1-2008
461-120-0125	1-30-2008	Amend(T)	3-1-2008	461-135-0900	1-30-2008	Amend(T)	3-1-2008
461-120-0125	2-22-2008	Amend(T)	4-1-2008	461-135-0900	2-22-2008	Amend(T)	4-1-2008
461-120-0310	12-1-2007	Amend(T)	1-1-2008	461-135-1102	1-28-2008	Amend(T)	3-1-2008
461-120-0310	3-1-2008	Amend	4-1-2008	461-135-1125	1-28-2008	Adopt(T)	3-1-2008
461-120-0310(T)	12-1-2007	Suspend	1-1-2008	461-135-1185(T)	3-1-2008	Repeal	4-1-2008
461-120-0310(T)	3-1-2008	Repeal	4-1-2008	461-135-1195	3-1-2008	Adopt	4-1-2008
461-120-0340	3-1-2008	Amend	4-1-2008	461-135-1250	3-1-2008	Adopt	4-1-2008
461-120-0340(T)	3-1-2008	Repeal	4-1-2008	461-135-1250(T)	3-1-2008	Repeal	4-1-2008
461-120-0345	3-1-2008	Amend	4-1-2008	461-140-0220	1-1-2008	Amend	2-1-2008
461-120-0345(T)	3-1-2008	Repeal	4-1-2008	461-145-0030	1-1-2008	Amend	2-1-2008
461-125-0130	3-1-2008	Amend	4-1-2008	461-145-0080	3-1-2008	Amend	4-1-2008
461-125-0130(T)	3-1-2008	Repeal	4-1-2008	461-145-0080(T)	3-1-2008	Repeal	4-1-2008
461-125-0260	3-1-2008	Adopt	4-1-2008	461-145-0108	1-1-2008	Amend	2-1-2008
461-125-0260(T)	3-1-2008	Repeal	4-1-2008	461-145-0180	1-1-2008	Repeal	2-1-2008
461-125-0810	3-1-2008	Amend	4-1-2008	461-145-0220	1-1-2008	Amend	2-1-2008
461-125-0810(T)	3-1-2008	Repeal	4-1-2008	461-145-0410	3-1-2008	Amend	4-1-2008
461-130-0305	3-1-2008	Amend	4-1-2008	461-145-0410(T)	3-1-2008	Repeal	4-1-2008
461-130-0305(T)	3-1-2008	Repeal	4-1-2008	461-145-0580	1-1-2008	Amend	2-1-2008
461-130-0310	3-1-2008	Amend	4-1-2008	461-150-0047	1-1-2008	Amend	2-1-2008
461-130-0310(T)	3-1-2008	Repeal	4-1-2008	461-155-0150	3-1-2008	Amend	4-1-2008
461-130-0315	3-1-2008	Amend	4-1-2008	461-155-0150(T)	3-1-2008	Repeal	4-1-2008
461-130-0315(T)	3-1-2008	Repeal	4-1-2008	461-155-0180	1-24-2008	Amend(T)	3-1-2008
461-130-0323	3-1-2008	Adopt	4-1-2008	461-155-0235	1-24-2008	Amend(T)	3-1-2008
461-130-0323(T)	3-1-2008	Repeal	4-1-2008	461-155-0250	1-1-2008	Amend	2-1-2008
461-130-0325	3-1-2008	Amend	4-1-2008	461-155-0250	3-1-2008	Amend(T)	4-1-2008
461-130-0325(T)	3-1-2008	Repeal	4-1-2008	461-155-0270	1-1-2008	Amend	2-1-2008
461-130-0327	3-1-2008	Amend	4-1-2008	461-155-0290	3-1-2008	Amend(T)	4-1-2008
461-130-0327(T)	3-1-2008	Repeal	4-1-2008	461-155-0291	3-1-2008	Amend(T)	4-1-2008
461-130-0330	3-1-2008	Amend	4-1-2008	461-155-0295	3-1-2008	Amend(T)	4-1-2008
461-130-0330(T)	3-1-2008	Repeal	4-1-2008	461-155-0300	1-1-2008	Amend	2-1-2008
461-130-0335	3-1-2008	Amend	4-1-2008	461-155-0320	1-1-2008	Amend(T)	2-1-2008
461-130-0335(T)	3-1-2008	Repeal	4-1-2008	461-155-0320	3-1-2008	Adopt	4-1-2008
461-135-0010	3-1-2008	Amend	4-1-2008	461-155-0320(T)	3-1-2008	Repeal	4-1-2008
461-135-0010(T)	3-1-2008	Repeal	4-1-2008	461-155-0670	3-1-2008	Amend	4-1-2008
461-135-0070	3-1-2008	Amend	4-1-2008	461-155-0670(T)	3-1-2008	Repeal	4-1-2008
461-135-0070(T)	3-1-2008	Repeal	4-1-2008	461-160-0040	1-1-2008	Amend	2-1-2008
461-135-0075	3-1-2008	Amend	4-1-2008	461-160-0055	1-1-2008	Amend	2-1-2008
461-135-0075(T)	3-1-2008	Repeal	4-1-2008	461-160-0410	1-1-2008	Amend	2-1-2008
461-135-0082	1-30-2008	Amend(T)	3-1-2008	461-160-0415	1-1-2008	Amend	2-1-2008
461-135-0082	2-22-2008	Amend(T)	4-1-2008	461-160-0430	3-1-2008	Amend	4-1-2008
461-135-0085	3-1-2008	Amend	4-1-2008	461-160-0430(T)	3-1-2008	Repeal	4-1-2008
461-135-0085(T)	3-1-2008	Repeal	4-1-2008	461-160-0550	1-1-2008	Amend	2-1-2008
461-135-0089	3-1-2008	Amend	4-1-2008	461-160-0580	1-1-2008	Amend	2-1-2008
461-135-0089(T)	3-1-2008	Repeal	4-1-2008	461-160-0620	1-1-2008	Amend	2-1-2008
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461-160-0850	3-1-2008	Suspend	4-1-2008	471-010-0051	1-7-2008	Suspend	2-1-2008
461-160-0855	1-1-2008	Adopt	2-1-2008	471-010-0052	1-7-2008	Suspend	2-1-2008
461-165-0030	3-1-2008	Amend	4-1-2008	471-010-0054	1-7-2008	Suspend	2-1-2008
461-165-0030(T)	3-1-2008	Repeal	4-1-2008	471-010-0055	1-7-2008	Suspend	2-1-2008
461-170-0020	3-1-2008	Amend	4-1-2008	471-010-0057	1-7-2008	Suspend	2-1-2008
461-170-0020(T)	3-1-2008	Repeal	4-1-2008	471-010-0080	2-26-2008	Adopt(T)	4-1-2008
461-170-0030	3-1-2008	Amend	4-1-2008	471-010-0085	2-26-2008	Adopt(T)	4-1-2008
461-170-0030(T)	3-1-2008	Repeal	4-1-2008	471-010-0090	2-26-2008	Adopt(T)	4-1-2008
461-170-0130	1-1-2008	Amend	2-1-2008	471-010-0100	2-26-2008	Adopt(T)	4-1-2008
461-175-0200	1-1-2008	Amend(T)	2-1-2008	471-010-0105	2-26-2008	Adopt(T)	4-1-2008
461-175-0270	1-1-2008	Amend	2-1-2008	471-010-0110	2-26-2008	Adopt(T)	4-1-2008
461-175-0340	1-1-2008	Amend(T)	2-1-2008	471-010-0115	2-26-2008	Adopt(T)	4-1-2008
461-180-0010	3-1-2008	Amend	4-1-2008	471-010-0120	2-26-2008	Adopt(T)	4-1-2008
461-180-0010(T)	3-1-2008	Repeal	4-1-2008	471-010-0125	2-26-2008	Adopt(T)	4-1-2008
461-180-0020	3-1-2008	Amend	4-1-2008	471-030-0050	12-3-2007	Amend	1-1-2008
461-180-0020(T)	3-1-2008	Repeal	4-1-2008	471-030-0052	2-15-2008	Amend(T)	3-1-2008
461-180-0070	3-1-2008	Amend	4-1-2008	471-041-0060	1-8-2008	Amend	2-1-2008
461-180-0070(T)	3-1-2008	Repeal	4-1-2008	543-001-0005	1-17-2008	Amend	3-1-2008
461-180-0081	3-1-2008	Amend	4-1-2008	571-040-0010	2-19-2008	Suspend	4-1-2008
461-180-0081(T)	3-1-2008	Repeal	4-1-2008	571-040-0015	2-19-2008	Suspend	4-1-2008
461-180-0085	1-1-2008	Amend	2-1-2008	571-040-0020	2-19-2008	Suspend	4-1-2008
461-190-0051	3-1-2008	Amend	4-1-2008	571-040-0030	2-19-2008	Suspend	4-1-2008
461-190-0151(T)	3-1-2008	Repeal	4-1-2008	571-040-0040	2-19-2008	Suspend	4-1-2008
461-190-0163	3-1-2008	Amend	4-1-2008	571-040-0050	2-19-2008	Suspend	4-1-2008
461-190-0163(T)	3-1-2008	Repeal	4-1-2008	571-040-0060	2-19-2008	Suspend	4-1-2008
461-190-0171	3-1-2008	Amend	4-1-2008	571-040-0070	2-19-2008	Suspend	4-1-2008
461-190-0171(T)	3-1-2008	Repeal	4-1-2008	571-040-0080	2-19-2008	Suspend	4-1-2008
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461-190-0201	3-1-2008	Repeal	4-1-2008	571-040-0201	2-19-2008	Suspend	4-1-2008
461-190-0211	3-1-2008	Amend	4-1-2008	571-040-0251	2-19-2008	Suspend	4-1-2008
461-190-0211(T)	3-1-2008	Repeal	4-1-2008	571-040-0261	2-19-2008	Suspend	4-1-2008
461-190-0231	3-1-2008	Amend	4-1-2008	571-040-0380	2-19-2008	Suspend	4-1-2008
461-190-0231(T)	3-1-2008	Repeal	4-1-2008	571-040-0382	2-19-2008	Suspend	4-1-2008
461-190-0241	3-1-2008	Amend	4-1-2008	571-040-0390	2-19-2008	Suspend	4-1-2008
461-190-0241(T)	3-1-2008	Repeal	4-1-2008	571-040-0400	2-19-2008	Suspend	4-1-2008
461-195-0501	1-1-2008	Amend	2-1-2008	571-040-0410	2-19-2008	Suspend	4-1-2008
461-195-0501	1-1-2008	Amend(T)	2-1-2008	571-040-0420	2-19-2008	Suspend	4-1-2008
461-195-0501	3-1-2008	Amend	4-1-2008	571-040-0430	2-19-2008	Suspend	4-1-2008
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461-195-0551	1-1-2008	Amend	2-1-2008	573-075-0100	3-14-2008	Amend	4-1-2008
461-195-0551	1-1-2008	Amend(T)	2-1-2008	573-095-0010	3-14-2008	Amend	4-1-2008
461-195-0551	3-1-2008	Amend	4-1-2008	574-050-0005	2-1-2008	Amend	3-1-2008
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461-195-0551(T)	3-1-2008	Repeal	4-1-2008	575-095-0010	1-9-2008	Adopt	2-1-2008
461-195-0561	3-1-2008	Amend	4-1-2008	575-095-0015	1-9-2008	Adopt	2-1-2008
461-195-0561(T)	3-1-2008	Repeal	4-1-2008	575-095-0020	1-9-2008	Adopt	2-1-2008
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461-195-0601(T)	3-1-2008	Repeal	4-1-2008	575-095-0030	1-9-2008	Adopt	2-1-2008
462-160-0110	11-28-2007	Amend(T)	1-1-2008	575-095-0035	1-9-2008	Adopt	2-1-2008
462-160-0120	11-28-2007	Amend(T)	1-1-2008	575-095-0040	1-9-2008	Adopt	2-1-2008
462-160-0130	11-28-2007	Amend(T)	1-1-2008	575-095-0045	1-9-2008	Adopt	2-1-2008

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576-008-0210	2-19-2008	Suspend	4-1-2008	580-040-0220	2-19-2008	Suspend	4-1-2008
576-008-0215	2-19-2008	Suspend	4-1-2008	580-040-0223	2-19-2008	Suspend	4-1-2008
576-008-0220	2-19-2008	Suspend	4-1-2008	580-040-0225	2-19-2008	Suspend	4-1-2008
576-008-0223	2-19-2008	Suspend	4-1-2008	580-040-0230	2-19-2008	Suspend	4-1-2008
576-008-0225	2-19-2008	Suspend	4-1-2008	580-040-0235	2-19-2008	Suspend	4-1-2008
576-008-0228	2-19-2008	Suspend	4-1-2008	580-040-0240	2-19-2008	Suspend	4-1-2008
576-008-0230	2-19-2008	Suspend	4-1-2008	580-040-0245	2-19-2008	Suspend	4-1-2008
576-008-0235	2-19-2008	Suspend	4-1-2008	580-040-0255	2-19-2008	Suspend	4-1-2008
576-008-0240	2-19-2008	Suspend	4-1-2008	580-040-0260	2-19-2008	Suspend	4-1-2008
576-008-0245	2-19-2008	Suspend	4-1-2008	580-040-0275	2-19-2008	Suspend	4-1-2008
576-008-0255	2-19-2008	Suspend	4-1-2008	580-040-0277	2-19-2008	Suspend	4-1-2008
576-008-0260	2-19-2008	Suspend	4-1-2008	580-040-0280	2-19-2008	Suspend	4-1-2008
576-008-0275	2-19-2008	Suspend	4-1-2008	580-040-0285	2-19-2008	Suspend	4-1-2008
576-008-0277	2-19-2008	Suspend	4-1-2008	580-040-0290	2-19-2008	Suspend	4-1-2008
576-008-0280	2-19-2008	Suspend	4-1-2008	580-040-0292	2-19-2008	Suspend	4-1-2008
576-008-0282	2-19-2008	Suspend	4-1-2008	580-040-0295	2-19-2008	Suspend	4-1-2008
576-008-0285	2-19-2008	Suspend	4-1-2008	580-042-0010	2-19-2008	Amend(T)	4-1-2008
576-008-0287	2-19-2008	Suspend	4-1-2008	580-043-0060	1-14-2008	Amend	2-1-2008
576-008-0290	2-19-2008	Suspend	4-1-2008	580-043-0065	1-14-2008	Amend	2-1-2008
576-008-0292	2-19-2008	Suspend	4-1-2008	580-043-0070	1-14-2008	Amend	2-1-2008
576-008-0295	2-19-2008	Suspend	4-1-2008	580-043-0075	1-14-2008	Amend	2-1-2008
577-030-0035	1-1-2008	Amend(T)	2-1-2008	580-043-0085	1-14-2008	Amend	2-1-2008
579-020-0006	3-14-2008	Amend	4-1-2008	580-043-0090	1-14-2008	Amend	2-1-2008
579-030-0005	3-14-2008	Amend	4-1-2008	580-043-0095	1-14-2008	Amend	2-1-2008
579-030-0010	3-14-2008	Amend	4-1-2008	580-043-0100	1-14-2008	Adopt	2-1-2008
579-030-0015	3-14-2008	Amend	4-1-2008	580-050-0001	2-19-2008	Suspend	4-1-2008
579-030-0020	3-14-2008	Amend	4-1-2008	580-050-0005	2-19-2008	Suspend	4-1-2008
580-023-0005	2-19-2008	Suspend	4-1-2008	580-050-0010	2-19-2008	Suspend	4-1-2008
580-023-0010	2-19-2008	Suspend	4-1-2008	580-050-0015	2-19-2008	Suspend	4-1-2008
580-023-0015	2-19-2008	Suspend	4-1-2008	580-050-0020	2-19-2008	Suspend	4-1-2008
580-023-0020	2-19-2008	Suspend	4-1-2008	580-050-0025	2-19-2008	Suspend	4-1-2008
580-023-0025	2-19-2008	Suspend	4-1-2008	580-050-0032	2-19-2008	Suspend	4-1-2008
580-023-0030	2-19-2008	Suspend	4-1-2008	580-050-0033	2-19-2008	Suspend	4-1-2008
580-023-0035	2-19-2008	Suspend	4-1-2008	580-050-0040	2-19-2008	Suspend	4-1-2008
580-023-0040	2-19-2008	Suspend	4-1-2008	580-050-0041	2-19-2008	Suspend	4-1-2008
580-023-0045	2-19-2008	Suspend	4-1-2008	580-050-0042	2-19-2008	Suspend	4-1-2008
580-023-0050	2-19-2008	Suspend	4-1-2008	580-050-0100	2-19-2008	Suspend	4-1-2008
580-023-0055	2-19-2008	Suspend	4-1-2008	580-050-0105	2-19-2008	Suspend	4-1-2008
580-023-0060	2-19-2008	Suspend	4-1-2008	580-060-0000	2-19-2008	Adopt(T)	4-1-2008
580-023-0065	2-19-2008	Suspend	4-1-2008	580-060-0005	2-19-2008	Adopt(T)	4-1-2008
580-023-0105	2-19-2008	Adopt(T)	4-1-2008	580-060-0010	2-19-2008	Adopt(T)	4-1-2008
580-023-0110	2-19-2008	Adopt(T)	4-1-2008	580-060-0015	2-19-2008	Adopt(T)	4-1-2008
580-023-0115	2-19-2008	Adopt(T)	4-1-2008	580-060-0020	2-19-2008	Adopt(T)	4-1-2008
580-023-0120	2-19-2008	Adopt(T)	4-1-2008	580-060-0025	2-19-2008	Adopt(T)	4-1-2008
580-023-0125	2-19-2008	Adopt(T)	4-1-2008	580-060-0030	2-19-2008	Adopt(T)	4-1-2008
580-023-0130	2-19-2008	Adopt(T)	4-1-2008	580-060-0035	2-19-2008	Adopt(T)	4-1-2008
580-023-0135	2-19-2008	Adopt(T)	4-1-2008	580-060-0040	2-19-2008	Adopt(T)	4-1-2008
580-023-0140	2-19-2008	Adopt(T)	4-1-2008	580-060-0045	2-19-2008	Adopt(T)	4-1-2008
580-023-0145	2-19-2008	Adopt(T)	4-1-2008	580-060-0050	2-19-2008	Adopt(T)	4-1-2008
580-023-0150	2-19-2008	Adopt(T)	4-1-2008	580-060-0055	2-19-2008	Adopt(T)	4-1-2008
580-040-0035	1-14-2008	Amend	2-1-2008	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

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580-061-0020	2-19-2008	Adopt(T)	4-1-2008	581-020-0090	1-25-2008	Amend	3-1-2008
580-061-0025	2-19-2008	Adopt(T)	4-1-2008	581-020-0250	12-12-2007	Adopt	1-1-2008
580-061-0030	2-19-2008	Adopt(T)	4-1-2008	581-022-1065	1-25-2008	Amend	3-1-2008
580-061-0035	2-19-2008	Adopt(T)	4-1-2008	581-022-1661	12-12-2007	Adopt	1-1-2008
580-061-0040	2-19-2008	Adopt(T)	4-1-2008	581-022-1940	12-12-2007	Amend	1-1-2008
580-061-0045	2-19-2008	Adopt(T)	4-1-2008	581-022-1941	12-12-2007	Adopt	1-1-2008
580-061-0050	2-19-2008	Adopt(T)	4-1-2008	581-023-0035	2-22-2008	Amend	4-1-2008
580-061-0055	2-19-2008	Adopt(T)	4-1-2008	581-023-0041	2-22-2008	Amend	4-1-2008
580-061-0060	2-19-2008	Adopt(T)	4-1-2008	581-023-0104	12-12-2007	Amend	1-1-2008
580-061-0065	2-19-2008	Adopt(T)	4-1-2008	581-024-0285	12-12-2007	Amend	1-1-2008
580-061-0070	2-19-2008	Adopt(T)	4-1-2008	582-001-0010	2-4-2008	Amend	3-1-2008
580-061-0075	2-19-2008	Adopt(T)	4-1-2008	582-001-0010	3-3-2008	Amend	4-1-2008
580-061-0080	2-19-2008	Adopt(T)	4-1-2008	582-030-0005	2-4-2008	Amend	3-1-2008
580-061-0085	2-19-2008	Adopt(T)	4-1-2008	582-030-0008	2-4-2008	Amend	3-1-2008
580-061-0090	2-19-2008	Adopt(T)	4-1-2008	582-070-0020	2-4-2008	Amend	3-1-2008
580-061-0095	2-19-2008	Adopt(T)	4-1-2008	582-070-0020	3-3-2008	Amend	4-1-2008
580-061-0100	2-19-2008	Adopt(T)	4-1-2008	582-070-0025	2-4-2008	Amend	3-1-2008
580-061-0105	2-19-2008	Adopt(T)	4-1-2008	582-070-0030	2-4-2008	Amend	3-1-2008
580-061-0110	2-19-2008	Adopt(T)	4-1-2008	582-080-0020	3-3-2008	Amend	4-1-2008
580-061-0115	2-19-2008	Adopt(T)	4-1-2008	583-050-0011	2-7-2008	Amend	3-1-2008
580-061-0120	2-19-2008	Adopt(T)	4-1-2008	584-017-0185	2-15-2008	Amend(T)	3-1-2008
580-061-0125	2-19-2008	Adopt(T)	4-1-2008	584-017-0351	12-14-2007	Adopt	1-1-2008
580-061-0130	2-19-2008	Adopt(T)	4-1-2008	584-019-0002	12-14-2007	Amend	1-1-2008
580-061-0135	2-19-2008	Adopt(T)	4-1-2008	584-019-0003	12-14-2007	Amend	1-1-2008
580-061-0140	2-19-2008	Adopt(T)	4-1-2008	584-019-0020	12-14-2007	Repeal	1-1-2008
580-061-0145	2-19-2008	Adopt(T)	4-1-2008	584-019-0025	12-14-2007	Amend	1-1-2008
580-061-0150	2-19-2008	Adopt(T)	4-1-2008	584-019-0035	12-14-2007	Amend	1-1-2008
580-061-0155	2-19-2008	Adopt(T)	4-1-2008	584-019-0040	12-14-2007	Amend	1-1-2008
580-061-0160	2-19-2008	Adopt(T)	4-1-2008	584-020-0000	12-14-2007	Amend	1-1-2008
580-062-0000	2-19-2008	Adopt(T)	4-1-2008	584-020-0005	12-14-2007	Amend	1-1-2008
580-062-0005	2-19-2008	Adopt(T)	4-1-2008	584-020-0010	12-14-2007	Amend	1-1-2008
580-062-0010	2-19-2008	Adopt(T)	4-1-2008	584-020-0015	12-14-2007	Amend	1-1-2008
580-062-0015	2-19-2008	Adopt(T)	4-1-2008	584-020-0020	12-14-2007	Amend	1-1-2008
580-062-0020	2-19-2008	Adopt(T)	4-1-2008	584-020-0025	12-14-2007	Amend	1-1-2008
580-063-0000	2-19-2008	Adopt(T)	4-1-2008	584-020-0030	12-14-2007	Amend	1-1-2008
580-063-0005	2-19-2008	Adopt(T)	4-1-2008	584-020-0035	12-14-2007	Amend	1-1-2008
580-063-0010	2-19-2008	Adopt(T)	4-1-2008	584-020-0040	12-14-2007	Amend	1-1-2008
580-063-0015	2-19-2008	Adopt(T)	4-1-2008	584-020-0041	12-14-2007	Amend	1-1-2008
580-063-0020	2-19-2008	Adopt(T)	4-1-2008	584-023-0005	12-14-2007	Amend	1-1-2008
580-063-0025	2-19-2008	Adopt(T)	4-1-2008	584-023-0015	12-14-2007	Amend	1-1-2008
580-063-0030	2-19-2008	Adopt(T)	4-1-2008	584-023-0025	12-14-2007	Amend	1-1-2008
580-063-0035	2-19-2008	Adopt(T)	4-1-2008	584-038-0080	12-14-2007	Amend	1-1-2008
580-063-0040	2-19-2008	Adopt(T)	4-1-2008	584-038-0335	12-14-2007	Amend	1-1-2008
580-063-0045	2-19-2008	Adopt(T)	4-1-2008	584-038-0336	12-14-2007	Amend	1-1-2008
581-011-0140	1-25-2008	Amend	3-1-2008	584-040-0080	12-14-2007	Amend	1-1-2008
581-015-0055	2-22-2008	Repeal	4-1-2008	584-040-0310	12-14-2007	Amend	1-1-2008
581-015-0065	2-22-2008	Repeal	4-1-2008	584-040-0315	12-14-2007	Amend	1-1-2008
581-015-2570	12-12-2007	Amend	1-1-2008	584-050-0002	12-14-2007	Amend	1-1-2008
581-015-2595	12-12-2007	Amend	1-1-2008	584-050-0005	12-14-2007	Amend	1-1-2008
581-019-0033	2-22-2008	Adopt(T)	4-1-2008	584-050-0006	12-14-2007	Amend	1-1-2008
581-020-0060	1-25-2008	Amend	3-1-2008	584-050-0009	12-14-2007	Amend	1-1-2008
581-020-0065	1-25-2008	Amend	3-1-2008	584-050-0012	12-14-2007	Amend	1-1-2008
581-020-0070	1-25-2008	Amend	3-1-2008	584-050-0015	12-14-2007	Amend	1-1-2008
581-020-0075	1-25-2008	Amend	3-1-2008	584-050-0016	12-14-2007	Amend	1-1-2008
581-020-0080	1-25-2008	Amend	3-1-2008	584-050-0018	12-14-2007	Amend	1-1-2008

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584-050-0020	12-14-2007	Amend	1-1-2008	603-054-0016	1-7-2008	Amend	2-1-2008
584-050-0035	12-14-2007	Amend	1-1-2008	603-054-0017	1-7-2008	Amend	2-1-2008
584-050-0040	12-14-2007	Amend	1-1-2008	603-054-0018	1-7-2008	Amend	2-1-2008
584-050-0042	12-14-2007	Amend	1-1-2008	603-054-0024	1-7-2008	Amend	2-1-2008
584-050-0065	12-14-2007	Amend	1-1-2008	603-054-0035	2-15-2008	Amend	3-1-2008
584-050-0066	12-14-2007	Amend	1-1-2008	620-020-0010	1-25-2008	Adopt	3-1-2008
584-050-0067	12-14-2007	Amend	1-1-2008	620-020-0020	1-25-2008	Adopt	3-1-2008
584-050-0070	12-14-2007	Amend	1-1-2008	620-020-0030	1-25-2008	Adopt	3-1-2008
584-052-0032	12-14-2007	Amend	1-1-2008	623-040-0005	12-3-2007	Adopt	1-1-2008
584-060-0012	12-14-2007	Amend	1-1-2008	623-040-0010	12-3-2007	Adopt	1-1-2008
584-060-0051	2-15-2008	Amend(T)	3-1-2008	623-040-0015	12-3-2007	Adopt	1-1-2008
584-070-0011	12-14-2007	Repeal	1-1-2008	629-001-0005	3-7-2008	Amend	4-1-2008
584-070-0014	12-14-2007	Amend	1-1-2008	629-043-0040	1-1-2008	Amend	2-1-2008
584-070-0021	12-14-2007	Repeal	1-1-2008	629-043-0041	1-1-2008	Repeal	2-1-2008
603-011-0610	11-28-2007	Amend	1-1-2008	629-043-0043	1-1-2008	Repeal	2-1-2008
603-011-0620	11-28-2007	Amend	1-1-2008	629-048-0001	1-1-2008	Adopt	2-1-2008
603-014-0016	2-6-2008	Amend	3-1-2008	629-048-0005	1-1-2008	Adopt	2-1-2008
603-014-0055	2-6-2008	Amend	3-1-2008	629-048-0010	1-1-2008	Adopt	2-1-2008
603-014-0065	2-6-2008	Amend	3-1-2008	629-048-0020	1-1-2008	Adopt	2-1-2008
603-014-0095	2-6-2008	Amend	3-1-2008	629-048-0100	1-1-2008	Adopt	2-1-2008
603-014-0100	2-6-2008	Repeal	3-1-2008	629-048-0110	1-1-2008	Adopt	2-1-2008
603-014-0135	2-6-2008	Amend	3-1-2008	629-048-0120	1-1-2008	Adopt	2-1-2008
603-027-0410	2-15-2008	Amend	3-1-2008	629-048-0130	1-1-2008	Adopt	2-1-2008
603-027-0410	3-17-2008	Amend(T)	4-1-2008	629-048-0140	1-1-2008	Adopt	2-1-2008
603-027-0420	11-29-2007	Amend(T)	1-1-2008	629-048-0150	1-1-2008	Adopt	2-1-2008
603-027-0420	2-15-2008	Amend	3-1-2008	629-048-0160	1-1-2008	Adopt	2-1-2008
603-027-0420	3-17-2008	Amend(T)	4-1-2008	629-048-0200	1-1-2008	Adopt	2-1-2008
603-027-0420(T)	11-29-2007	Suspend	1-1-2008	629-048-0210	1-1-2008	Adopt	2-1-2008
603-027-0430	11-29-2007	Amend(T)	1-1-2008	629-048-0220	1-1-2008	Adopt	2-1-2008
603-027-0430	2-15-2008	Amend	3-1-2008	629-048-0230	1-1-2008	Adopt	2-1-2008
603-027-0430	3-17-2008	Amend(T)	4-1-2008	629-048-0300	1-1-2008	Adopt	2-1-2008
603-027-0430(T)	11-29-2007	Suspend	1-1-2008	629-048-0310	1-1-2008	Adopt	2-1-2008
603-027-0440	2-15-2008	Amend	3-1-2008	629-048-0320	1-1-2008	Adopt	2-1-2008
603-027-0440	3-17-2008	Amend(T)	4-1-2008	629-048-0330	1-1-2008	Adopt	2-1-2008
603-027-0470	2-15-2008	Amend	3-1-2008	629-048-0400	1-1-2008	Adopt	2-1-2008
603-027-0490	2-15-2008	Amend	3-1-2008	629-048-0450	1-1-2008	Adopt	2-1-2008
603-027-0490	3-17-2008	Amend(T)	4-1-2008	629-048-0500	1-1-2008	Adopt	2-1-2008
603-052-0127	2-8-2008	Amend	3-1-2008	635-001-0210	1-1-2008	Amend	2-1-2008
603-052-0129	2-8-2008	Amend	3-1-2008	635-003-0004	3-15-2008	Amend(T)	4-1-2008
603-052-0130	2-8-2008	Repeal	3-1-2008	635-004-0018	1-1-2008	Amend	1-1-2008
603-052-0132	2-8-2008	Repeal	3-1-2008	635-004-0019	11-28-2007	Amend(T)	1-1-2008
603-052-0134	2-8-2008	Repeal	3-1-2008	635-004-0019	12-11-2007	Amend(T)	1-1-2008
603-052-0136	2-8-2008	Repeal	3-1-2008	635-004-0019(T)	11-28-2007	Suspend	1-1-2008
603-052-0138	2-8-2008	Repeal	3-1-2008	635-004-0027	1-1-2008	Amend(T)	2-1-2008
603-052-0140	2-8-2008	Repeal	3-1-2008	635-004-0033	11-28-2007	Amend(T)	1-1-2008
603-052-0142	2-8-2008	Repeal	3-1-2008	635-004-0033	1-1-2008	Amend	1-1-2008
603-052-0145	2-8-2008	Repeal	3-1-2008	635-004-0033(T)	11-28-2007	Suspend	1-1-2008
603-052-0347	1-11-2008	Amend	2-1-2008	635-004-0170	11-28-2007	Amend(T)	1-1-2008
603-052-0360	2-8-2008	Amend	3-1-2008	635-004-0170	1-1-2008	Amend	1-1-2008
603-052-0395	2-28-2008	Adopt	4-1-2008	635-005-0005	1-23-2008	Amend	3-1-2008
603-052-0880	1-7-2008	Amend	2-1-2008	635-005-0055	12-11-2007	Amend(T)	1-1-2008
603-052-1200	3-7-2008	Amend	4-1-2008	635-005-0055	12-14-2007	Amend(T)	1-1-2008
603-052-1221	2-8-2008	Amend	3-1-2008	635-005-0055	12-14-2007	Suspend	1-1-2008
603-052-1230	1-16-2008	Amend	3-1-2008	635-005-0064	1-23-2008	Amend	3-1-2008
603-052-1240	1-7-2008	Amend	2-1-2008	635-005-0065	1-23-2008	Amend	3-1-2008

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635-006-0232	1-15-2008	Amend	2-1-2008	635-041-0065	3-5-2008	Amend(T)	4-1-2008
635-006-0850	1-1-2008	Amend(T)	2-1-2008	635-041-0065	3-10-2008	Amend(T)	4-1-2008
635-006-0850	1-23-2008	Amend	3-1-2008	635-041-0065(T)	3-10-2008	Suspend	4-1-2008
635-006-0850(T)	1-23-2008	Repeal	3-1-2008	635-042-0010	2-11-2008	Amend	3-1-2008
635-006-0910	1-23-2008	Amend	3-1-2008	635-042-0110	5-12-2008	Amend(T)	4-1-2008
635-006-0930	1-23-2008	Amend	3-1-2008	635-042-0130	12-1-2007	Amend(T)	1-1-2008
635-006-1015	1-15-2008	Amend	2-1-2008	635-042-0130	1-1-2008	Amend(T)	2-1-2008
635-006-1065	1-15-2008	Amend	2-1-2008	635-042-0130	2-11-2008	Amend	3-1-2008
635-006-1075	1-15-2008	Amend	2-1-2008	635-042-0130(T)	1-1-2008	Suspend	2-1-2008
635-011-0100	1-1-2008	Amend	2-1-2008	635-042-0130(T)	2-11-2008	Repeal	3-1-2008
635-013-0003	1-1-2008	Amend	2-1-2008	635-042-0135	1-1-2008	Amend(T)	2-1-2008
635-013-0004	1-1-2008	Amend	2-1-2008	635-042-0135	1-31-2008	Amend(T)	3-1-2008
635-013-0004	3-15-2008	Amend(T)	4-1-2008	635-042-0135	2-11-2008	Amend	3-1-2008
635-013-0009	3-15-2008	Amend(T)	4-1-2008	635-042-0135	2-21-2008	Amend(T)	4-1-2008
635-014-0080	1-1-2008	Amend	2-1-2008	635-042-0135(T)	1-31-2008	Suspend	3-1-2008
635-014-0090	1-1-2008	Amend	2-1-2008	635-042-0135(T)	2-11-2008	Repeal	3-1-2008
635-014-0090	3-15-2008	Amend(T)	4-1-2008	635-042-0145	1-31-2008	Amend(T)	3-1-2008
635-016-0080	1-1-2008	Amend	2-1-2008	635-042-0145	3-2-2008	Amend(T)	4-1-2008
635-016-0090	1-1-2008	Amend	2-1-2008	635-042-0145(T)	3-2-2008	Suspend	4-1-2008
635-016-0090	1-1-2008	Amend	2-1-2008	635-042-0160	1-31-2008	Amend(T)	3-1-2008
635-017-0080	1-1-2008	Amend	2-1-2008	635-042-0160	3-2-2008	Amend(T)	4-1-2008
635-017-0090	1-1-2008	Amend	2-1-2008	635-042-0160(T)	3-2-2008	Suspend	4-1-2008
635-017-0090	1-1-2008	Amend	2-1-2008	635-042-0180	1-31-2008	Amend(T)	3-1-2008
635-017-0090	1-9-2008	Amend(T)	2-1-2008	635-042-0180	3-2-2008	Amend(T)	4-1-2008
635-017-0090	2-1-2008	Amend(T)	3-1-2008	635-042-0180(T)	3-2-2008	Suspend	4-1-2008
635-017-0090	3-1-2008	Amend(T)	4-1-2008	635-048-0005	1-1-2008	Amend	2-1-2008
635-017-0090(T)	2-1-2008	Suspend	3-1-2008	635-048-0010	1-1-2008	Amend	2-1-2008
635-017-0095	1-1-2008	Amend	2-1-2008	635-048-0030	1-1-2008	Amend	2-1-2008
635-017-0095	1-1-2008	Amend(T)	2-1-2008	635-055-0000	2-21-2008	Amend	4-1-2008
635-017-0095	2-11-2008	Amend	3-1-2008	635-055-0000	2-29-2008	Amend	4-1-2008
635-017-0095(T)	1-1-2008	Suspend	2-1-2008	635-055-0020	2-21-2008	Amend	4-1-2008
635-017-0095(T)	2-11-2008	Repeal	3-1-2008	635-055-0020	2-29-2008	Amend	4-1-2008
635-018-0080	1-1-2008	Amend	2-1-2008	635-055-0030	2-21-2008	Amend	4-1-2008
635-018-0090	1-1-2008	Amend	2-1-2008	635-055-0030	2-29-2008	Amend	4-1-2008
635-019-0080	1-1-2008	Amend	2-1-2008	635-055-0035	2-21-2008	Amend	4-1-2008
635-019-0090	1-1-2008	Amend	2-1-2008	635-055-0035	2-29-2008	Amend	4-1-2008
635-021-0080	1-1-2008	Amend	2-1-2008	635-055-0075	2-21-2008	Amend	4-1-2008
635-021-0090	1-1-2008	Amend	2-1-2008	635-055-0075	2-29-2008	Amend	4-1-2008
635-023-0080	1-1-2008	Amend	2-1-2008	635-056-0010	11-19-2007	Amend	1-1-2008
635-023-0090	1-1-2008	Amend	2-1-2008	635-056-0020	11-19-2007	Amend	1-1-2008
635-023-0095	1-1-2008	Amend	2-1-2008	635-057-0000	11-19-2007	Adopt	1-1-2008
635-023-0095	1-1-2008	Amend(T)	2-1-2008	635-060-0023	12-1-2007	Amend	1-1-2008
635-023-0095	2-11-2008	Amend	3-1-2008	635-079-0000	2-21-2008	Adopt	4-1-2008
635-023-0095	3-15-2008	Amend(T)	4-1-2008	635-079-0005	2-21-2008	Adopt	4-1-2008
635-023-0095(T)	1-1-2008	Suspend	2-1-2008	635-079-0010	2-21-2008	Adopt	4-1-2008
635-023-0095(T)	2-11-2008	Repeal	3-1-2008	635-200-0090	12-31-2007	Amend(T)	2-1-2008
635-023-0125	1-1-2008	Amend	2-1-2008	641-020-0010	3-22-2008	Adopt	3-1-2008
635-023-0125	2-25-2008	Amend(T)	4-1-2008	641-020-0020	3-22-2008	Adopt	3-1-2008
635-023-0125	2-27-2008	Amend(T)	4-1-2008	641-020-0030	3-22-2008	Adopt	3-1-2008
635-023-0128	1-1-2008	Amend	2-1-2008	642-020-0010	3-22-2008	Adopt	3-1-2008
635-023-0130	1-1-2008	Amend	2-1-2008	642-020-0020	3-22-2008	Adopt	3-1-2008
635-039-0080	1-1-2008	Amend	2-1-2008	642-020-0030	3-22-2008	Adopt	3-1-2008
635-039-0090	1-1-2008	Amend	2-1-2008	644-040-0010	2-15-2008	Adopt	3-1-2008
635-041-0050	2-11-2008	Amend	3-1-2008	644-040-0020	2-15-2008	Adopt	3-1-2008
635-041-0065	1-31-2008	Amend(T)	3-1-2008	644-040-0030	2-15-2008	Adopt	3-1-2008

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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	731-001-0025	12-24-2007	Amend	2-1-2008
660-011-0060	2-13-2008	Amend	3-1-2008	731-005-0450	1-24-2008	Amend(T)	3-1-2008
660-021-0010	2-13-2008	Amend	3-1-2008	731-005-0550	12-24-2007	Amend(T)	2-1-2008
660-021-0020	2-13-2008	Amend	3-1-2008	734-010-0230	1-24-2008	Amend(T)	3-1-2008
660-021-0030	2-13-2008	Amend	3-1-2008	734-010-0260	1-24-2008	Amend(T)	3-1-2008
660-021-0040	2-13-2008	Amend	3-1-2008	734-059-0020	12-24-2007	Adopt	2-1-2008
660-021-0050	2-13-2008	Amend	3-1-2008	734-059-0025	12-24-2007	Adopt	2-1-2008
660-021-0060	2-13-2008	Amend	3-1-2008	734-059-0030	12-24-2007	Adopt	2-1-2008
660-021-0070	2-13-2008	Amend	3-1-2008	734-059-0050	12-24-2007	Adopt	2-1-2008
660-021-0080	2-13-2008	Amend	3-1-2008	735-010-0045	12-24-2007	Amend	2-1-2008
660-025-0040	2-13-2008	Amend	3-1-2008	735-010-0130	2-4-2008	Amend(T)	3-1-2008
660-027-0005	2-13-2008	Adopt	3-1-2008	735-016-0030	2-4-2008	Amend	3-1-2008
660-027-0010	2-13-2008	Adopt	3-1-2008	735-016-0040	2-4-2008	Amend	3-1-2008
660-027-0020	2-13-2008	Adopt	3-1-2008	735-020-0075	11-30-2007	Adopt	1-1-2008
660-027-0030	2-13-2008	Adopt	3-1-2008	735-024-0070	1-1-2008	Amend(T)	2-1-2008
660-027-0040	2-13-2008	Adopt	3-1-2008	735-024-0080	1-1-2008	Amend(T)	2-1-2008
660-027-0050	2-13-2008	Adopt	3-1-2008	735-030-0300	1-1-2008	Adopt	2-1-2008
660-027-0060	2-13-2008	Adopt	3-1-2008	735-030-0310	1-1-2008	Adopt	2-1-2008
660-027-0070	2-13-2008	Adopt	3-1-2008	735-030-0320	1-1-2008	Adopt	2-1-2008
660-027-0080	2-13-2008	Adopt	3-1-2008	735-030-0330	1-1-2008	Adopt	2-1-2008
660-041-0000	12-10-2007	Amend(T)	1-1-2008	735-032-0020	1-1-2008	Amend(T)	2-1-2008
660-041-0000	2-21-2008	Amend(T)	4-1-2008	735-032-0050	1-1-2008	Amend	2-1-2008
660-041-0010	12-10-2007	Amend(T)	1-1-2008	735-040-0040	1-1-2008	Amend(T)	2-1-2008
660-041-0010	2-21-2008	Amend(T)	4-1-2008	735-040-0050	1-1-2008	Amend(T)	2-1-2008
660-041-0020	2-21-2008	Amend(T)	4-1-2008	735-040-0080	1-1-2008	Amend(T)	2-1-2008
660-041-0030	12-10-2007	Amend(T)	1-1-2008	735-040-0090	1-1-2008	Amend(T)	2-1-2008
660-041-0030	2-21-2008	Amend(T)	4-1-2008	735-040-0100	1-1-2008	Amend(T)	2-1-2008
660-041-0040	12-10-2007	Amend(T)	1-1-2008	735-046-0010	1-1-2008	Amend(T)	2-1-2008
660-041-0040	2-21-2008	Amend(T)	4-1-2008	735-046-0050	1-1-2008	Amend(T)	2-1-2008
660-041-0050	12-10-2007	Suspend	1-1-2008	735-050-0000	2-4-2008	Amend	3-1-2008
660-041-0050	2-21-2008	Suspend	4-1-2008	735-050-0060	2-4-2008	Amend	3-1-2008
660-041-0060	12-10-2007	Adopt(T)	1-1-2008	735-050-0062	2-4-2008	Amend	3-1-2008
660-041-0060	2-21-2008	Adopt(T)	4-1-2008	735-050-0064	2-4-2008	Amend	3-1-2008
660-041-0070	12-10-2007	Adopt(T)	1-1-2008	735-060-0120	1-1-2008	Amend	2-1-2008
660-041-0070	2-21-2008	Adopt(T)	4-1-2008	735-062-0000	1-1-2008	Amend	2-1-2008
660-041-0080	2-21-2008	Adopt(T)	4-1-2008	735-062-0000	2-4-2008	Amend(T)	3-1-2008
660-041-0090	2-21-2008	Adopt(T)	4-1-2008	735-062-0005	2-4-2008	Amend(T)	3-1-2008
660-041-0100	2-21-2008	Adopt(T)	4-1-2008	735-062-0010	2-4-2008	Amend(T)	3-1-2008
660-041-0500	12-10-2007	Adopt(T)	1-1-2008	735-062-0020	2-4-2008	Amend(T)	3-1-2008
660-041-0500	2-21-2008	Adopt(T)	4-1-2008	735-062-0021	2-4-2008	Adopt(T)	3-1-2008

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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
735-064-0005	2-4-2008	Amend	3-1-2008	736-002-0102	2-15-2008	Adopt	3-1-2008
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
735-064-0100	1-25-2008	Amend	3-1-2008	736-006-0100	3-1-2008	Amend	3-1-2008
735-064-0220	1-1-2008	Amend	2-1-2008	736-006-0110	3-1-2008	Amend(T)	3-1-2008
735-064-0230	1-25-2008	Amend	3-1-2008	736-006-0115	3-1-2008	Amend	3-1-2008
735-070-0010	2-4-2008	Amend(T)	3-1-2008	736-006-0125	3-1-2008	Amend	3-1-2008
735-070-0080	1-1-2008	Amend	1-1-2008	736-006-0140	3-1-2008	Amend	3-1-2008
735-070-0190	12-24-2007	Amend	2-1-2008	736-006-0150	3-1-2008	Amend	3-1-2008
735-072-0035	1-1-2008	Amend	2-1-2008	736-054-0005	2-15-2008	Amend	3-1-2008
735-074-0080	1-1-2008	Amend	2-1-2008	736-054-0010	2-15-2008	Amend	3-1-2008
735-074-0140	1-1-2008	Amend	2-1-2008	736-054-0015	2-15-2008	Amend	3-1-2008
735-074-0180	1-1-2008	Amend	2-1-2008	736-054-0025	2-15-2008	Amend	3-1-2008
735-074-0260	1-1-2008	Am. & Ren.	2-1-2008	800-010-0015	2-1-2008	Amend	2-1-2008
735-074-0270	1-1-2008	Am. & Ren.	2-1-2008	800-010-0017	2-1-2008	Amend	2-1-2008
735-074-0280	1-1-2008	Am. & Ren.	2-1-2008	800-010-0025	2-1-2008	Amend	2-1-2008
735-074-0290	1-1-2008	Am. & Ren.	2-1-2008	800-010-0030	2-1-2008	Amend	2-1-2008
735-076-0002	1-1-2008	Amend	2-1-2008	800-010-0041	2-1-2008	Amend	2-1-2008
735-076-0005	2-22-2008	Amend(T)	4-1-2008	800-015-0005	2-1-2008	Amend	2-1-2008
735-076-0007	1-1-2008	Amend	2-1-2008	800-015-0010	2-1-2008	Amend	2-1-2008
735-076-0018	1-1-2008	Amend	2-1-2008	800-015-0015	2-1-2008	Adopt	2-1-2008
735-076-0020	1-1-2008	Amend	2-1-2008	800-015-0030	2-1-2008	Amend	2-1-2008
735-076-0035	1-1-2008	Amend	2-1-2008	800-020-0015	2-1-2008	Amend	2-1-2008
735-080-0010	1-1-2008	Repeal	2-1-2008	800-020-0020	2-1-2008	Amend	2-1-2008
735-080-0020	1-1-2008	Amend	2-1-2008	800-020-0022	2-1-2008	Amend	2-1-2008
735-080-0030	1-1-2008	Repeal	2-1-2008	800-020-0025	2-1-2008	Amend	2-1-2008
735-080-0040	1-1-2008	Amend	2-1-2008	800-020-0026	2-1-2008	Amend	2-1-2008
735-080-0080	1-1-2008	Amend	2-1-2008	800-020-0030	2-1-2008	Amend	2-1-2008
735-090-0000	12-24-2007	Amend	2-1-2008	800-020-0031	2-1-2008	Amend	2-1-2008
735-090-0020	12-24-2007	Amend	2-1-2008	800-020-0035	2-1-2008	Amend	2-1-2008
735-090-0051	12-24-2007	Amend	2-1-2008	800-025-0020	2-1-2008	Amend	2-1-2008
735-090-0120	12-24-2007	Amend	2-1-2008	800-025-0023	2-1-2008	Amend	2-1-2008
735-090-0130	12-24-2007	Amend	2-1-2008	800-025-0025	2-1-2008	Amend	2-1-2008
735-152-0000	1-1-2008	Amend(T)	2-1-2008	800-025-0030	2-1-2008	Amend	2-1-2008
735-152-0040	1-1-2008	Amend(T)	2-1-2008	800-025-0060	2-1-2008	Amend	2-1-2008
735-152-0050	1-1-2008	Amend(T)	2-1-2008	800-025-0070	2-1-2008	Amend	2-1-2008
735-152-0060	1-1-2008	Amend(T)	2-1-2008	800-030-0025	2-1-2008	Amend	2-1-2008
735-158-0000	11-30-2007	Amend	1-1-2008	800-030-0050	2-1-2008	Amend	2-1-2008
735-160-0115	12-24-2007	Amend	2-1-2008	801-001-0035	1-1-2008	Amend	2-1-2008
736-002-0010	2-15-2008	Amend	3-1-2008	801-010-0340	1-1-2008	Amend	2-1-2008
736-002-0020	2-15-2008	Amend	3-1-2008	801-030-0010	1-1-2008	Amend	2-1-2008
736-002-0030	2-15-2008	Amend	3-1-2008	801-030-0015	1-1-2008	Amend	2-1-2008
736-002-0032	2-15-2008	Adopt	3-1-2008	801-030-0020	1-1-2008	Amend	2-1-2008

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804-022-0010	2-4-2008	Amend	3-1-2008	808-003-0230	1-1-2008	Amend	2-1-2008
804-025-0020	2-4-2008	Amend	3-1-2008	808-003-0230	1-1-2008	Amend	2-1-2008
804-030-0015	2-4-2008	Am. & Ren.	3-1-2008	808-003-0235	1-1-2008	Amend	2-1-2008
804-030-0035	2-4-2008	Am. & Ren.	3-1-2008	808-003-0255	1-1-2008	Amend	2-1-2008
806-010-0010	2-28-2008	Amend	4-1-2008	808-003-0440	1-1-2008	Amend	2-1-2008
806-010-0015	2-28-2008	Repeal	4-1-2008	808-004-0120	1-1-2008	Amend	2-1-2008
806-010-0020	2-28-2008	Amend	4-1-2008	808-004-0250	1-1-2008	Amend	2-1-2008
806-010-0033	2-28-2008	Amend	4-1-2008	808-004-0320	1-1-2008	Amend	2-1-2008
806-010-0035	2-28-2008	Amend	4-1-2008	808-004-0340	1-1-2008	Amend	2-1-2008
806-010-0090	7-1-2008	Amend	4-1-2008	808-004-0340	1-1-2008	Amend	2-1-2008
806-010-0105	7-1-2008	Amend	4-1-2008	808-004-0400	1-1-2008	Amend	2-1-2008
806-010-0145	7-1-2008	Amend	4-1-2008	808-004-0450	1-1-2008	Amend	2-1-2008
808-001-0020	1-1-2008	Amend	2-1-2008	808-004-0530	1-1-2008	Adopt	2-1-2008
808-001-0020	1-1-2008	Amend	2-1-2008	808-004-0540	1-1-2008	Amend	2-1-2008
808-002-0020	1-1-2008	Amend	2-1-2008	808-004-0600	1-1-2008	Amend	2-1-2008
808-002-0210	1-1-2008	Amend	2-1-2008	808-005-0020	1-1-2008	Amend	2-1-2008
808-002-0220	1-1-2008	Amend	2-1-2008	808-005-0020	1-1-2008	Amend	2-1-2008
808-002-0220	1-1-2008	Amend	2-1-2008	808-009-0360	1-14-2008	Suspend	2-1-2008
808-002-0280	1-1-2008	Amend	2-1-2008	808-009-0360	3-7-2008	Repeal	4-1-2008
808-002-0325	1-1-2008	Amend	2-1-2008	808-030-0010	1-1-2008	Adopt	2-1-2008
808-002-0328	1-1-2008	Amend	2-1-2008	808-030-0020	1-1-2008	Adopt	2-1-2008
808-002-0330	1-1-2008	Amend	2-1-2008	808-030-0030	1-1-2008	Adopt	2-1-2008
808-002-0500	1-1-2008	Amend	2-1-2008	808-030-0040	1-1-2008	Adopt	2-1-2008
808-002-0540	1-1-2008	Amend	2-1-2008	808-030-0050	1-1-2008	Adopt	2-1-2008
808-002-0590	1-1-2008	Adopt	2-1-2008	808-030-0060	1-1-2008	Adopt	2-1-2008
808-002-0625	1-1-2008	Adopt	2-1-2008	808-030-0070	1-1-2008	Adopt	2-1-2008
808-002-0665	1-1-2008	Amend	2-1-2008	808-040-0010	1-1-2008	Adopt	2-1-2008
808-002-0870	1-1-2008	Amend	2-1-2008	808-040-0020	1-1-2008	Adopt	2-1-2008
808-002-0900	1-1-2008	Amend	2-1-2008	808-040-0025	1-1-2008	Adopt	2-1-2008
808-002-0920	1-1-2008	Amend	2-1-2008	808-040-0030	1-1-2008	Adopt	2-1-2008
808-003-0010	1-1-2008	Amend	2-1-2008	808-040-0040	1-1-2008	Adopt	2-1-2008
808-003-0015	1-1-2008	Amend	2-1-2008	808-040-0040	1-1-2008	Adopt	2-1-2008
808-003-0015	1-1-2008	Amend	2-1-2008	808-040-0050	1-1-2008	Adopt	2-1-2008
808-003-0020	1-1-2008	Amend	2-1-2008	808-040-0060	1-1-2008	Adopt	2-1-2008
808-003-0030	1-1-2008	Amend	2-1-2008	808-040-0070	1-1-2008	Adopt	2-1-2008
808-003-0035	1-1-2008	Amend	2-1-2008	808-040-0080	1-1-2008	Adopt	2-1-2008
808-003-0035	1-1-2008	Amend	2-1-2008	811-001-0005	1-31-2008	Amend	1-1-2008
808-003-0040	1-1-2008	Amend	2-1-2008	811-010-0085	11-30-2007	Amend	1-1-2008
808-003-0040	1-1-2008	Amend	2-1-2008	811-010-0086	11-30-2007	Amend	1-1-2008
808-003-0040	1-1-2008	Amend	2-1-2008	811-010-0090	11-30-2007	Amend	1-1-2008
808-003-0045	1-1-2008	Amend	2-1-2008	811-010-0093	11-30-2007	Amend	1-1-2008
808-003-0045	1-1-2008	Amend	2-1-2008	811-015-0010	11-30-2007	Amend	1-1-2008
808-003-0060	1-1-2008	Amend	2-1-2008	811-015-0025	11-30-2007	Amend	1-1-2008
808-003-0090	1-1-2008	Amend	2-1-2008	811-021-0005	11-30-2007	Amend	1-1-2008
808-003-0095	1-1-2008	Amend	2-1-2008	812-001-0200	1-1-2008	Amend	1-1-2008
808-003-0100	1-1-2008	Amend	2-1-2008	812-001-0200	1-2-2008	Amend(T)	2-1-2008
808-003-0105	1-1-2008	Amend	2-1-2008	812-002-0140	1-1-2008	Amend	1-1-2008
808-003-0110	1-1-2008	Amend	2-1-2008	812-002-0143	1-1-2008	Amend	1-1-2008
808-003-0112	1-1-2008	Amend	2-1-2008	812-002-0170	1-1-2008	Adopt	1-1-2008
808-003-0125	1-1-2008	Amend	2-1-2008	812-002-0265	1-1-2008	Adopt	1-1-2008
808-003-0130	1-1-2008	Amend	2-1-2008	812-002-0320	7-1-2008	Amend	4-1-2008
808-003-0130	1-1-2008	Amend	2-1-2008	812-002-0380	7-1-2008	Amend	4-1-2008
808-003-0135	1-1-2008	Amend	2-1-2008	812-002-0420	1-1-2008	Amend	1-1-2008
808-003-018	1-1-2008	Amend	2-1-2008	812-002-0580	1-1-2008	Amend	1-1-2008
808-003-0200	1-1-2008	Amend	2-1-2008	812-002-0630	1-1-2008	Adopt	1-1-2008
808-003-0220	1-1-2008	Amend	2-1-2008	812-002-0635	1-1-2008	Adopt	1-1-2008

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812-002-0760	1-1-2008	Amend	1-1-2008	812-005-0800	1-2-2008	Amend(T)	2-1-2008
812-002-0840	1-1-2008	Repeal	1-1-2008	812-005-0800	7-1-2008	Amend	4-1-2008
812-003-0130	7-1-2008	Amend	4-1-2008	812-007-0040	7-1-2008	Amend	4-1-2008
812-003-0131	7-1-2008	Adopt	4-1-2008	812-008-0030	7-1-2008	Amend	4-1-2008
812-003-0140	1-10-2008	Amend(T)	2-1-2008	812-008-0040	1-1-2008	Amend	1-1-2008
812-003-0140	7-1-2008	Amend	4-1-2008	812-008-0040	7-1-2008	Amend	4-1-2008
812-003-0150	1-1-2008	Amend	1-1-2008	812-008-0060	1-1-2008	Amend	1-1-2008
812-003-0152	7-1-2008	Adopt	4-1-2008	812-008-0070	1-1-2008	Amend	1-1-2008
812-003-0153	7-1-2008	Adopt	4-1-2008	812-008-0110	1-1-2008	Amend	1-1-2008
812-003-0155	1-1-2008	Adopt	1-1-2008	812-009-0140	1-1-2008	Amend	1-1-2008
812-003-0155	7-1-2008	Amend	4-1-2008	812-010-0420	1-1-2008	Amend	1-1-2008
812-003-0160	1-1-2008	Amend	1-1-2008	812-010-0470	1-1-2008	Amend	1-1-2008
812-003-0170	1-1-2008	Amend	1-1-2008	812-012-0110	1-1-2008	Adopt	1-1-2008
812-003-0170	7-1-2008	Amend	4-1-2008	812-012-0130	1-1-2008	Adopt	1-1-2008
812-003-0171	7-1-2008	Adopt	4-1-2008	812-012-0130	1-18-2008	Amend(T)	3-1-2008
812-003-0175	1-1-2008	Amend	1-1-2008	813-120-0001	1-28-2008	Amend	3-1-2008
812-003-0175	7-1-2008	Amend	4-1-2008	813-120-0010	1-28-2008	Amend	3-1-2008
812-003-0180	1-1-2008	Amend	1-1-2008	813-120-0020	1-28-2008	Amend	3-1-2008
812-003-0190	1-1-2008	Amend	1-1-2008	813-120-0030	1-28-2008	Am. & Ren.	3-1-2008
812-003-0200	1-1-2008	Amend	1-1-2008	813-120-0040	1-28-2008	Amend	3-1-2008
812-003-0200	7-1-2008	Amend	4-1-2008	813-120-0050	1-28-2008	Amend	3-1-2008
812-003-0220	7-1-2008	Amend	4-1-2008	813-120-0060	1-28-2008	Amend	3-1-2008
812-003-0221	7-1-2008	Adopt	4-1-2008	813-120-0070	1-28-2008	Amend	3-1-2008
812-003-0230	7-1-2008	Amend	4-1-2008	813-120-0080	1-28-2008	Amend	3-1-2008
812-003-0240	1-1-2008	Amend	1-1-2008	813-120-0090	1-28-2008	Amend	3-1-2008
812-003-0250	1-1-2008	Amend	1-1-2008	813-120-0100	1-28-2008	Am. & Ren.	3-1-2008
812-003-0260	1-1-2008	Amend	1-1-2008	813-120-0110	1-28-2008	Amend	3-1-2008
812-003-0260	7-1-2008	Amend	4-1-2008	813-120-0120	1-28-2008	Amend	3-1-2008
812-003-0270	1-10-2008	Amend(T)	2-1-2008	813-120-0130	1-28-2008	Amend	3-1-2008
812-003-0270	7-1-2008	Amend	4-1-2008	813-120-0140	1-28-2008	Amend	3-1-2008
812-003-0280	1-1-2008	Amend	1-1-2008	813-140-0010	12-18-2007	Amend(T)	2-1-2008
812-003-0280	7-1-2008	Amend	4-1-2008	813-140-0050	12-18-2007	Amend(T)	2-1-2008
812-003-0290	1-1-2008	Amend	1-1-2008	813-140-0090	12-18-2007	Amend(T)	2-1-2008
812-003-0290	7-1-2008	Amend	4-1-2008	813-140-0095	12-18-2007	Adopt(T)	2-1-2008
812-003-0300	1-1-2008	Amend	1-1-2008	818-001-0087	11-30-2007	Amend	1-1-2008
812-003-0300	7-1-2008	Amend	4-1-2008	818-012-0030	11-30-2007	Amend	1-1-2008
812-003-0310	1-1-2008	Amend	1-1-2008	818-021-0060	11-30-2007	Amend	1-1-2008
812-003-0340	7-1-2008	Amend	4-1-2008	818-021-0070	11-30-2007	Amend	1-1-2008
812-003-0360	7-1-2008	Amend	4-1-2008	818-035-0030	11-30-2007	Amend	1-1-2008
812-003-0380	1-1-2008	Amend	1-1-2008	818-035-0040	11-30-2007	Amend	1-1-2008
812-003-0400	1-1-2008	Amend	1-1-2008	818-035-0065	11-30-2007	Amend	1-1-2008
812-003-0420	7-1-2008	Amend	4-1-2008	818-042-0040	11-30-2007	Amend	1-1-2008
812-003-0440	7-1-2008	Amend	4-1-2008	818-042-0060	11-30-2007	Amend	1-1-2008
812-003-0450	7-1-2008	Amend	4-1-2008	818-042-0095	11-30-2007	Adopt	1-1-2008
812-004-0240	1-1-2008	Amend	1-1-2008	820-010-0236	3-12-2008	Adopt	4-1-2008
812-004-0250	1-1-2008	Amend	1-1-2008	820-010-0300	3-12-2008	Amend	4-1-2008
812-004-0260	1-1-2008	Amend	1-1-2008	820-010-0305	3-12-2008	Amend	4-1-2008
812-004-0560	1-1-2008	Amend	1-1-2008	820-010-0325	3-12-2008	Amend	4-1-2008
812-004-0590	1-1-2008	Amend	1-1-2008	820-010-0415	3-12-2008	Amend	4-1-2008
812-004-0600	1-1-2008	Amend	1-1-2008	820-010-0425	3-12-2008	Amend	4-1-2008
812-004-0600	7-1-2008	Amend	4-1-2008	820-010-0427	3-12-2008	Amend	4-1-2008
812-005-0200	1-1-2008	Amend	1-1-2008	820-010-0450	3-12-2008	Amend	4-1-2008
812-005-0210	1-1-2008	Amend	1-1-2008	820-010-0605	3-12-2008	Amend	4-1-2008
812-005-0250	1-1-2008	Amend	1-1-2008	836-009-0007	12-11-2007	Amend(T)	1-1-2008
812-005-0270	1-1-2008	Adopt	1-1-2008	836-052-0500	1-1-2008	Amend	1-1-2008

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836-052-0516	1-1-2008	Amend	1-1-2008	837-035-0180	11-16-2007	Adopt	1-1-2008
836-052-0526	1-1-2008	Amend	1-1-2008	837-035-0200	11-16-2007	Adopt	1-1-2008
836-052-0531	1-1-2008	Adopt	1-1-2008	837-035-0220	11-16-2007	Adopt	1-1-2008
836-052-0546	1-1-2008	Amend	1-1-2008	837-035-0240	11-16-2007	Adopt	1-1-2008
836-052-0556	1-1-2008	Amend	1-1-2008	837-035-0260	11-16-2007	Adopt	1-1-2008
836-052-0566	1-1-2008	Amend	1-1-2008	837-035-0280	11-16-2007	Adopt	1-1-2008
836-052-0576	1-1-2008	Amend	1-1-2008	837-035-0300	11-16-2007	Adopt	1-1-2008
836-052-0616	1-1-2008	Amend	1-1-2008	837-035-0320	11-16-2007	Adopt	1-1-2008
836-052-0626	1-1-2008	Amend	1-1-2008	837-035-0340	11-16-2007	Adopt	1-1-2008
836-052-0636	1-1-2008	Amend	1-1-2008	839-001-0150	1-1-2008	Amend	2-1-2008
836-052-0639	1-1-2008	Adopt	1-1-2008	839-001-0153	1-1-2008	Amend	2-1-2008
836-052-0656	1-1-2008	Amend	1-1-2008	839-001-0157	1-1-2008	Repeal	2-1-2008
836-052-0666	1-1-2008	Amend	1-1-2008	839-001-0160	1-1-2008	Amend	2-1-2008
836-052-0676	1-1-2008	Amend	1-1-2008	839-001-0495	1-1-2008	Adopt	2-1-2008
836-052-0696	1-1-2008	Amend	1-1-2008	839-001-0496	1-1-2008	Adopt	2-1-2008
836-052-0700	1-1-2008	Am. & Ren.	1-1-2008	839-001-0740	1-1-2008	Amend	2-1-2008
836-052-0706	1-1-2008	Amend	1-1-2008	839-001-0760	1-1-2008	Amend	2-1-2008
836-052-0726	1-1-2008	Amend	1-1-2008	839-002-0015	1-1-2008	Adopt	2-1-2008
836-052-0736	1-1-2008	Amend	1-1-2008	839-002-0020	1-1-2008	Adopt	2-1-2008
836-052-0738	1-1-2008	Adopt	1-1-2008	839-002-0025	1-1-2008	Adopt	2-1-2008
836-052-0740	1-1-2008	Adopt	1-1-2008	839-002-0030	1-1-2008	Adopt	2-1-2008
836-052-0746	1-1-2008	Amend	1-1-2008	839-002-0035	1-1-2008	Adopt	2-1-2008
836-052-0756	1-1-2008	Amend	1-1-2008	839-002-0040	1-1-2008	Adopt	2-1-2008
836-052-0766	1-1-2008	Amend	1-1-2008	839-002-0045	1-1-2008	Adopt	2-1-2008
836-052-0776	1-1-2008	Amend	1-1-2008	839-002-0050	1-1-2008	Adopt	2-1-2008
836-052-0786	1-1-2008	Amend	1-1-2008	839-002-0055	1-1-2008	Adopt	2-1-2008
836-052-1000	1-1-2008	Adopt	2-1-2008	839-002-0060	1-1-2008	Adopt	2-1-2008
836-053-0016	2-11-2008	Repeal	3-1-2008	839-002-0065	1-1-2008	Adopt	2-1-2008
836-053-0021	2-11-2008	Amend	3-1-2008	839-002-0070	1-1-2008	Adopt	2-1-2008
836-053-0026	2-11-2008	Repeal	3-1-2008	839-002-0080	1-1-2008	Adopt	2-1-2008
836-053-0030	2-11-2008	Amend	3-1-2008	839-003-0005	1-1-2008	Amend	2-1-2008
836-053-0040	2-11-2008	Amend	3-1-2008	839-003-0020	1-1-2008	Amend	2-1-2008
836-053-0050	2-11-2008	Amend	3-1-2008	839-003-0055	1-1-2008	Amend	2-1-2008
836-053-0060	2-11-2008	Amend	3-1-2008	839-003-0060	1-1-2008	Amend	2-1-2008
836-053-0065	2-11-2008	Amend	3-1-2008	839-003-0080	1-1-2008	Amend	2-1-2008
836-053-0065(T)	2-11-2008	Repeal	3-1-2008	839-003-0090	1-1-2008	Amend	2-1-2008
836-053-0910	12-21-2007	Amend(T)	2-1-2008	839-003-0200	1-1-2008	Adopt	2-1-2008
836-054-0050	1-16-2008	Repeal	3-1-2008	839-003-0205	1-1-2008	Adopt	2-1-2008
836-054-0055	1-16-2008	Repeal	3-1-2008	839-003-0210	1-1-2008	Adopt	2-1-2008
836-054-0060	1-16-2008	Repeal	3-1-2008	839-003-0215	1-1-2008	Adopt	2-1-2008
836-054-0065	1-16-2008	Repeal	3-1-2008	839-003-0220	1-1-2008	Adopt	2-1-2008
836-071-0130	12-11-2007	Amend(T)	1-1-2008	839-003-0225	1-1-2008	Adopt	2-1-2008
836-071-0135	12-11-2007	Amend(T)	1-1-2008	839-003-0230	1-1-2008	Adopt	2-1-2008
836-071-0145	12-11-2007	Amend(T)	1-1-2008	839-003-0235	1-1-2008	Adopt	2-1-2008
837-012-0520	1-25-2008	Amend(T)	3-1-2008	839-003-0240	1-1-2008	Adopt	2-1-2008
837-020-0035	11-30-2007	Amend(T)	1-1-2008	839-003-0245	1-1-2008	Adopt	2-1-2008
837-020-0115	11-30-2007	Amend(T)	1-1-2008	839-005-0000	1-1-2008	Amend	2-1-2008
837-035-0000	11-16-2007	Adopt	1-1-2008	839-005-0003	1-1-2008	Amend	2-1-2008
837-035-0020	11-16-2007	Adopt	1-1-2008	839-005-0010	1-1-2008	Amend	2-1-2008
837-035-0040	11-16-2007	Adopt	1-1-2008	839-005-0016	1-1-2008	Adopt	2-1-2008
837-035-0060	11-16-2007	Adopt	1-1-2008	839-005-0021	1-1-2008	Amend	2-1-2008
837-035-0080	11-16-2007	Adopt	1-1-2008	839-005-0026	1-1-2008	Amend	2-1-2008
837-035-0100	11-16-2007	Adopt	1-1-2008	839-005-0030	1-1-2008	Amend	2-1-2008
837-035-0120	11-16-2007	Adopt	1-1-2008	839-005-0195	1-1-2008	Adopt	2-1-2008
837-035-0140	11-16-2007	Adopt	1-1-2008	839-005-0200	1-1-2008	Adopt	2-1-2008

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839-005-0210	1-1-2008	Adopt	2-1-2008	839-025-0015	3-10-2008	Amend	4-1-2008
839-005-0215	1-1-2008	Adopt	2-1-2008	839-025-0020	1-1-2008	Amend	2-1-2008
839-005-0220	1-1-2008	Adopt	2-1-2008	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
839-006-0400	1-1-2008	Repeal	2-1-2008	839-025-0100	1-1-2008	Amend	2-1-2008
839-006-0405	1-1-2008	Repeal	2-1-2008	839-025-0150	1-1-2008	Amend	2-1-2008
839-006-0410	1-1-2008	Repeal	2-1-2008	839-025-0200	1-1-2008	Amend	2-1-2008
839-006-0415	1-1-2008	Repeal	2-1-2008	839-025-0210	1-1-2008	Amend	2-1-2008
839-006-0425	1-1-2008	Repeal	2-1-2008	839-025-0220	1-1-2008	Amend	2-1-2008
839-007-0075	1-1-2008	Adopt	2-1-2008	839-025-0230	1-1-2008	Amend	2-1-2008
839-009-0210	1-1-2008	Amend	2-1-2008	839-025-0310	1-1-2008	Amend	2-1-2008
839-009-0240	1-1-2008	Amend	2-1-2008	839-025-0315	1-1-2008	Adopt	2-1-2008
839-009-0250	1-1-2008	Amend	2-1-2008	839-025-0340	1-1-2008	Amend	2-1-2008
839-009-0260	1-1-2008	Amend	2-1-2008	839-025-0500	1-1-2008	Amend	2-1-2008
839-009-0280	1-1-2008	Amend	2-1-2008	839-025-0520	1-1-2008	Amend	2-1-2008
839-009-0320	1-1-2008	Amend	2-1-2008	839-025-0530	1-1-2008	Amend	2-1-2008
839-009-0325	1-1-2008	Adopt	2-1-2008	839-025-0540	1-1-2008	Amend	2-1-2008
839-009-0330	1-1-2008	Adopt	2-1-2008	839-025-0700	11-23-2007	Amend	1-1-2008
839-009-0335	1-1-2008	Adopt	2-1-2008	839-025-0700	1-1-2008	Amend	2-1-2008
839-009-0340	1-1-2008	Adopt	2-1-2008	839-025-0700	1-4-2008	Amend	2-1-2008
839-009-0345	1-1-2008	Adopt	2-1-2008	839-025-0700	1-11-2008	Amend	2-1-2008
839-009-0350	1-1-2008	Adopt	2-1-2008	839-025-0700	2-21-2008	Amend	4-1-2008
839-009-0355	1-1-2008	Adopt	2-1-2008	839-025-0700	3-13-2008	Amend	4-1-2008
839-009-0360	1-1-2008	Adopt	2-1-2008	845-003-0670	2-1-2008	Amend	3-1-2008
839-009-0362	1-1-2008	Adopt	2-1-2008	845-005-0416	1-1-2008	Adopt(T)	1-1-2008
839-009-0363	1-1-2008	Adopt	2-1-2008	845-005-0417	1-1-2008	Adopt(T)	1-1-2008
839-009-0365	1-1-2008	Adopt	2-1-2008	845-005-0420	1-1-2008	Amend(T)	1-1-2008
839-010-0000	1-1-2008	Amend	2-1-2008	845-005-0422	1-1-2008	Suspend	1-1-2008
839-010-0010	1-1-2008	Amend	2-1-2008	845-005-0423	1-1-2008	Suspend	1-1-2008
839-010-0020	1-1-2008	Amend	2-1-2008	845-005-0424	1-1-2008	Amend(T)	1-1-2008
839-010-0040	1-1-2008	Amend	2-1-2008	845-005-0425	1-1-2008	Adopt(T)	1-1-2008
839-010-0100	1-1-2008	Amend	2-1-2008	845-005-0426	1-1-2008	Adopt(T)	1-1-2008
839-010-0110	1-1-2008	Repeal	2-1-2008	845-005-0430	2-18-2008	Adopt(T)	3-1-2008
839-015-0140	1-1-2008	Amend	2-1-2008	845-005-0440	1-1-2008	Amend	2-1-2008
839-015-0508	1-1-2008	Amend	2-1-2008	845-006-0340	1-1-2008	Amend	2-1-2008
839-015-0509	1-1-2008	Adopt	2-1-2008	845-006-0391	1-1-2008	Adopt(T)	1-1-2008
839-015-0605	3-10-2008	Amend	4-1-2008	845-006-0392	1-1-2008	Adopt(T)	1-1-2008
839-020-0012	1-1-2008	Amend	2-1-2008	845-006-0395	1-1-2008	Suspend	1-1-2008
839-020-0015	1-1-2008	Amend	2-1-2008	845-006-0396	1-1-2008	Amend(T)	1-1-2008
839-020-0050	1-1-2008	Amend	2-1-2008	845-006-0398	1-1-2008	Suspend	1-1-2008
839-020-0051	1-1-2008	Adopt	2-1-2008	845-006-0400	1-1-2008	Adopt(T)	1-1-2008
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839-020-0260	1-1-2008	Amend	2-1-2008	845-006-0451	2-18-2008	Adopt(T)	3-1-2008
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839-025-0004	1-1-2008	Amend	2-1-2008	845-015-0141	1-1-2008	Adopt(T)	1-1-2008
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839-025-0007	1-1-2008	Amend	2-1-2008	845-020-0035	3-16-2008	Amend	3-1-2008
839-025-0008	1-1-2008	Amend	2-1-2008	847-005-0005	1-22-2008	Amend	3-1-2008
839-025-0008	3-10-2008	Amend	4-1-2008	847-008-0037	1-22-2008	Amend	3-1-2008
839-025-0010	1-1-2008	Amend	2-1-2008	847-008-0055	1-22-2008	Amend	3-1-2008

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847-010-0073	1-22-2008	Amend	3-1-2008	855-041-0520	2-20-2008	Am. & Ren.	4-1-2008
847-020-0155	1-22-2008	Amend	3-1-2008	855-042-0020	2-20-2008	Am. & Ren.	4-1-2008
847-020-0183	1-22-2008	Amend	3-1-2008	855-045-0200	2-20-2008	Adopt	4-1-2008
847-023-0005	1-22-2008	Amend	3-1-2008	855-045-0210	2-20-2008	Adopt	4-1-2008
847-050-0020	1-22-2008	Amend	3-1-2008	855-045-0220	2-20-2008	Adopt	4-1-2008
848-035-0020	2-19-2008	Amend(T)	4-1-2008	855-045-0230	2-20-2008	Adopt	4-1-2008
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850-060-0226	2-19-2008	Amend	4-1-2008	855-045-0260	2-20-2008	Adopt	4-1-2008
851-045-0015	11-21-2007	Amend	1-1-2008	855-045-0270	2-20-2008	Adopt	4-1-2008
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851-061-0020	2-25-2008	Amend	4-1-2008	855-055-0015	2-20-2008	Repeal	4-1-2008
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851-061-0090	2-25-2008	Amend	4-1-2008	856-001-0005	1-24-2008	Amend	3-1-2008
851-061-0120	2-25-2008	Amend	4-1-2008	856-010-0003	1-24-2008	Amend	3-1-2008
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852-050-0006	12-7-2007	Amend	1-1-2008	856-010-0014	1-24-2008	Amend	3-1-2008
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855-006-0015	2-5-2008	Adopt	3-1-2008	856-010-0018	1-24-2008	Amend	3-1-2008
855-010-0045	2-20-2008	Adopt	4-1-2008	856-010-0020	1-24-2008	Amend	3-1-2008
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855-019-0010	2-20-2008	Am. & Ren.	4-1-2008	860-038-0480	12-31-2007	Amend	2-1-2008
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855-041-0063	2-20-2008	Am. & Ren.	4-1-2008	918-225-0610	1-1-2008	Amend	2-1-2008
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918-282-0310	1-1-2008	Repeal	2-1-2008	918-305-0290	4-1-2008	Amend	4-1-2008
918-282-0355	1-1-2008	Amend	2-1-2008	918-305-0300	4-1-2008	Amend	4-1-2008
918-305-0005	4-1-2008	Amend	4-1-2008	918-305-0310	4-1-2008	Amend	4-1-2008
918-305-0030	4-1-2008	Amend	4-1-2008	918-305-0320	4-1-2008	Amend	4-1-2008
918-305-0100	4-1-2008	Amend	4-1-2008	918-400-0280	1-1-2008	Amend	2-1-2008
918-305-0105	4-1-2008	Amend	4-1-2008	918-400-0333	1-1-2008	Amend	2-1-2008
918-305-0110	4-1-2008	Amend	4-1-2008	918-400-0340	1-1-2008	Amend	2-1-2008
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918-305-0165	4-1-2008	Amend	4-1-2008	918-480-0140	4-1-2008	Adopt	4-1-2008
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